LEASE AGREEMENT

by and among

CA DETROIT 4001 29S LLC, Landlord

and

SOUTHWEST DETROIT LIGHTHOUSE CHARTER ACADEMY, Tenant

Dated as of: February 15, 2013

Table of Contents

<u>Page</u>
ARTICLE I Leased Premises
ARTICLE II Term 5
ARTICLE III Base Rent, Security Deposit and Guaranty
ARTICLE IV Use and Conduct of Business in Premises
ARTICLE V Real Estate Taxes
ARTICLE VI Landlord's Work; Delivery of Possession; Commencement Date; Tenant's Installations
ARTICLE VII Compliance with Legal Requirements; Reporting Requirements and Covenants 18
ARTICLE VIII Indemnity and Insurance
ARTICLE IX Alterations
ARTICLE X Landlord's and Tenant's Removable Property
ARTICLE XI Repairs and Maintenance
ARTICLE XII Utilities
ARTICLE XIII Landlord's Services
ARTICLE XIV Subordination
ARTICLE XV Quiet Enjoyment
ARTICLE XVI Assignment, Subletting and Mortgaging
ARTICLE XVII Signage
ARTICLE XVIII Damage or Destruction
ARTICLE XIX Eminent Domain
ARTICLE XX Surrender 41

ARTICLE XXI Default By Tenant; Landlord Remedies; Default by Landlord	41
ARTICLE XXII No Waivers	45
ARTICLE XXIII Curing Tenant's Defaults	46
ARTICLE XXIV Brokerage	46
ARTICLE XXV Notices	46
ARTICLE XXVI Estoppel Certificates	48
ARTICLE XXVII Holdover	48
ARTICLE XXVIII Representations and Warranties	48
ARTICLE XXIX Miscellaneous Provisions	49

LEASE AGREEMENT

LEASE (this "Lease") dated February 15, 2013 (the "Effective Date"), by and between CA DETROIT 4001 29S LLC, a Delaware limited liability company ("Landlord") and SOUTHWEST DETROIT LIGHTHOUSE CHARTER ACADEMY, a Michigan nonprofit corporation ("Tenant").

ARTICLE I Leased Premises

- 1.1 <u>Ownership of Premises</u>. Landlord is the fee owner of the parcel of land described in <u>Exhibit A</u> annexed hereto and made a part hereof.
- 1.2 <u>Description of Premises</u>. The "**Premises**" shall consist of the real property located at 4001 29th Street in the City of Detroit, Wayne County, Michigan (the "**Land**"), the building located on the Land (the "**Building**"), and all fixtures and improvements located therein and thereon. In consideration of Tenant's payment of the Base Rent and Additional Rent (each as defined below) and Tenant's performance of the covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby takes from Landlord said Premises.
 - 1.3 <u>Defined Terms</u>.
 - "AAA" has the meaning set forth in Section 6.13.
 - "Additional Rent" has the meaning set forth in Section 3.2.
 - "Alterations" has the meaning set forth in Section 9.1.
 - "Acquisition Deadline" has the meaning set forth in Section 2.3.1.
- "Authorizer" shall mean, on the Commencement Date, The Grand Valley State University Board of Trustees, and thereafter shall mean the charter school sponsor under Part 6a of the Revised School Code comprising Michigan Compiled Laws §§ 380.501-.507 that is, at any given time during the Term, party to the Charter School Contract with Tenant.
 - "As-Built Documents" has the meaning set forth in Section 6.7.
 - "Base Rent" has the meaning set forth in Section 3.1.
- **"Budget"** means the budget developed and agreed by the Parties, in writing, as provided in <u>Section 6.5</u>.
 - "Building" has the meaning set forth in Section 1.2.
 - "Building Systems" has the meaning set forth in Section 11.1.1.
- "Business Days" shall mean every calendar day Monday through Friday, inclusive, but excluding legal holidays of the United States of America and of the state where the Premises are located.
 - "Capital Repair Costs" has the meaning set forth in Section 11.2.2.

- "Charter School Contract" has the meaning set forth in Section 4.1.1.
- "Commencement Date" has the meaning set forth in Section 2.1.
- "Commencement Date Certificate" has the meaning set forth in Section 2.2.
- "Confidential Information" has the meaning set forth in Section 29.3.
- "Control" means the full power and legal authority to direct and control the business, operations, decisions and actions of the subject person or entity.
 - "Dangerous Condition" has the meaning set forth in Section 4.2.1.
 - "Department" has the meaning set forth in Section 7.5.1.
- "Development Costs" means all hard and soft costs (including the reasonable cost of Landlord's travel in connection with Landlord's efforts under <u>ARTICLE VI</u>) expended toward Landlord's Work, but not unspent contingency funds.
- "Due Care Plan" means the "Baseline Environmental Assessment" and the "Section 7a Compliance Analysis" prepared by G2 Consulting Group, LLC and dated February 8, 2013 (including any subsequent revisions thereto) setting forth the obligations arising with respect to the Premises pursuant to Section 20107a of Part 201, Natural Resources and Environmental Protection Act, 1994 PA 451 (as amended, and including all related administrative rules, "NREPA").
 - "Effective Date" means the date first set forth in the preamble to this Lease.
 - "Event of Default" has the meaning set forth in Section 21.1.
 - "Expiration Date" has the meaning set forth in Section 2.1.
 - "Governmental Approvals" has the meaning set forth in Section 2.3.2.
 - "Guarantor" has the meaning set forth in Section 3.5.
 - "Guaranty" has the meaning set forth in Section 3.5.
- "Hazardous Materials" means any material or substance that is regulated from time to time by any local, state or federal law relating to environmental conditions and industrial hygiene, including, without limitation, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder. "Hazardous Materials" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous material" pursuant to Legal Requirements.

- "Insurance Requirements" means the insurance coverages required to be maintained by Tenant pursuant to <u>Section 8.2</u> and Landlord pursuant to <u>Section 8.3</u>, and all requirements of the insurers issuing the policies containing such coverages.
 - "Interest Rate" has the meaning set forth in Section 3.3.2.
 - "Land" has the meaning set forth in Section 1.2.
 - "Landlord" means CA Detroit 4001 29S LLC, a Delaware limited liability company.
- "Landlord Affiliate" means any person or entity which Controls, is Controlled by, or is under common Control with Landlord.
 - "Landlord's Insurance" has the meaning set forth in Section 8.3.1.
- "Landlord Party" means Landlord and any Landlord Affiliate, and their respective officers, directors, shareholders, constituent partners, members, managers, principals, employees, staff, consultants, contractors, agents and professional advisors.
 - "Landlord's Property" has the meaning set forth in Section 10.1.
 - "Landlord's Work" has the meaning set forth in Section 6.1.
- "Lease Year" means (i) the period beginning on the July 1 occurring nearest (whether before or after) the Effective Date and ending on the June 30 first occurring after such July 1, and (ii) every period of July 1-June 30 thereafter occurring during the Term.
 - "Lease" means this Lease Agreement.
- "Legal Requirements" means all present and future statutes, laws, codes, regulations, ordinances, orders, rules, bylaws, administrative guidelines, requirements, directives and actions of any federal, state or local governmental or quasi-governmental authority, and other legal requirements of whatever kind or nature that are applicable to the Premises.
 - "Lighthouse" means Lighthouse Academies, Inc., a Delaware nonprofit corporation.
- "Management Agreement" means the Development, Academic and Business Services Agreement entered into (or to be entered into) by and between Tenant and Lighthouse, a copy of which Management Agreement is attached to this Lease as Attachment 1 to Exhibit C-1.
 - "Material Alterations" has the meaning set forth in Section 9.1.2.
 - "Mortgage" has the meaning set forth in Section 14.1.
 - "Non-Profit Company" has the meaning set forth in Section 2.5.
 - "OFAC" has the meaning set forth in Section 29.7.
 - "Option Agreement" has the meaning set forth in Section 2.4.

- "Party" shall mean either the Landlord Party or the Tenant Party.
- "Parties" shall mean both the Landlord Party and the Tenant Party.
- "Permitted Alterations" has the meaning set forth in Section 9.1.1.
- "Permitted Use" has the meaning set forth in Section 4.1.1.
- "Permitting Deadline" has the meaning set forth in Section 2.3.2.
- "Person" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.
 - "Plans and Specifications" has the meaning set forth in Section 6.1.
 - "Premises" has the meaning set forth in Section 1.2.
 - "Premiums" has the meaning set forth in Section 8.3.2.
 - "Prohibited Person" has the meaning set forth in Section 29.7.
- "Punchlist Items" means (i) minor details of construction, mechanical adjustment or any other similar matter, the non-completion of which will not interfere with Tenant's use and occupancy of the Premises for the Permitted Uses and (ii) items which, in accordance with good construction practice, must be performed after Substantial Completion of Tenant's Improvements.
 - "Real Estate Taxes" has the meaning set forth in Section 5.2.
 - "Rent" has the meaning set forth in Section 3.2.
 - "Rent Commencement Date" has the meaning set forth in Section 2.1.
 - "Request" has the meaning set forth in <u>Section 16.1.1</u>.
- "Specially Designated and National Blocked Person" has the meaning set forth in Section 29.7.
- "Substantial Completion" and "Substantially Complete" have the meanings set forth in Section 6.4.
 - "Substantially Damaged" has the meaning set forth in Section 18.1.1.
 - "Superior Lease" has the meaning set forth in Section 14.1.
 - "Superior Lessor" has the meaning set forth in Section 14.1.
 - "Superior Mortgage" has the meaning set forth in Section 14.1.
 - "Superior Mortgagee" has the meaning set forth in Section 14.1.
 - "Successor Landlord" has the meaning set forth in Section 14.2.

- "Target Commencement Date" has the meaning set forth in Section 6.3.
- "Tenant" means Southwest Detroit Lighthouse Charter Academy, a Michigan nonprofit corporation.
- "Tenant Affiliate" means any person or entity which Controls, is Controlled by, or is under common Control with Tenant.
 - "Tenant Delay" has the meaning set forth in Section 6.6.
 - "Tenant's Insurance Requirements" has the meaning set forth in Section 8.2.1.
- "Tenant Party" means Tenant and any Tenant Affiliate, and their respective officers, directors, shareholders, constituent partners, members or principals, employees, staff, students, parents, consultants, contractors, agents and professional advisors.
 - "Tenant's Removable Property" has the meaning set forth in Section 6.12.
 - "Tenant's Tax Payment" has the meaning set forth in Section 5.1.
 - "Term" has the meaning set forth in Section 2.1.
 - "Transfer Expenses" has the meaning set forth in Section 16.1.6.
 - "Unavoidable Delay" has the meaning set forth in Section 29.5.

ARTICLE II Term

- 2.1 <u>Term.</u> The term of this Lease (the "Term") shall commence on the date Landlord's Work is Substantially Complete in accordance with <u>Section 6.4</u> (the "Commencement Date"), and shall expire at 11:59 p.m. on June 30, 2042. The "Rent Commencement Date" of this Lease shall be the later date to occur of (i) the Commencement Date, and (ii) September 1, 2013. The "Expiration Date" shall mean the date of expiration of the Term or on such earlier date upon which the Term shall expire or be canceled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to any Legal Requirements.
- 2.2 <u>Commencement Date Certificate</u>. Tenant shall, upon the request of Landlord, execute, acknowledge and deliver to Landlord an instrument in the form of the "Commencement Date Certificate" attached hereto as <u>Exhibit B</u> and otherwise in form reasonably satisfactory to Landlord confirming the Commencement Date, the Rent Commencement Date, the Expiration Date, the Base Rent and such other items as Landlord may reasonably request; *provided*, that Tenant's failure to execute, acknowledge and deliver such an instrument shall not affect the validity of the Commencement Date, the Rent Commencement Date, the Expiration Date, the Base Rent or such other items as set forth in such Commencement Date Certificate.
 - 2.3 Right to Cancel. This Lease is expressly conditioned upon the following:

- 2.3.1 If, for any reason whatsoever, Landlord fails to acquire fee title to the Premises on or before February 28, 2013 (the "Acquisition Deadline"), then unless Landlord and Tenant mutually agree in writing to extend such date, Landlord may elect to terminate this Lease by sending written notice of such termination of this Lease within ten (10) Business Days following such Acquisition Deadline, and in such event, this Lease shall terminate and the Parties shall have no further obligations under this Lease, except for those obligations which expressly survive the termination of this Lease.
- 2.3.2 If, for any reason whatsoever, Landlord has not obtained approvals from all required governmental authorities on or before February 21, 2013 (the "Permitting Deadline"), on terms and conditions acceptable to Landlord in its sole discretion and sufficient to allow the Permitted Use at the Premises (the "Governmental Approvals"), Landlord may elect to terminate this Lease by sending written notice of such termination within ten (10) Business Days following such Permitting Deadline, and in such event, this Lease shall terminate and the Parties shall have no further obligations under this Lease, except for those obligations which expressly survive the termination of this Lease. Landlord shall, however, use its commercially reasonable efforts to obtain the Governmental Approvals on or before the Permitting Deadline. Notwithstanding the foregoing, Tenant acknowledges that it is solely responsible for determining whether applicable building codes, ordinances, regulations and other Legal Requirements, as well as all recorded building and use restrictions of every kind, are consistent with Tenant's use of the Premises for the Permitted Use. Accordingly, Tenant shall have no right to terminate or modify this Lease if the Premises are not suitable in any respect for the Permitted Use.
- 2.4 Option to Purchase. On or before the Rent Commencement Date, Landlord shall execute and deliver to Tenant and Tenant shall execute and deliver to Landlord an Option to Purchase Real Estate in the form attached hereto as Exhibit F (the "Option Agreement") granting Tenant (and any Tenant Affiliate to which Tenant may assign such option, according to the terms of the Option Agreement) an option to purchase the Premises in accordance with the terms and conditions of such Option Agreement. The Purchase Price set forth in the Option Agreement shall (subject to adjustments under Section 11.2 of this Lease) equal the estimated fair market value of the Premises, which the Landlord and Tenant have in good faith agreed to be (i) \$8,893,972 if the Closing Date (as defined in the Option Agreement) occurs in any of the 37th through 48th full calendar months of the Term, (ii) \$9,318,931 if the Closing Date occurs in any of the 49th through 60th full calendar months of the Term, and (iii) \$9,470,856 if the Closing Date occurs in any of the 61st through 72nd full calendar months in the Term. Landlord and Tenant acknowledge that one factor in determining the fair market value of the Premises is the Development Costs, and that the fair market values set forth above have been determined, in part, using the Budget.

On or before the later to occur of (i) the sixtieth (60th) Business Day after the Rent Commencement Date or (ii) the twentieth (20th) Business Day after Landlord shall have closed its permanent financing for the Premises—though in no instance later than the three hundred sixtieth (360th) Business Day after the Rent Commencement Date—Landlord shall notify Tenant of the actual Development Costs, and if the actual Development Costs differ from the Budget, the agreed fair market values of the Premises as set forth above shall be increased or decreased to amounts that reflect the estimated fair market value of the Premises for each applicable period set forth above, taking into account such actual Development Costs; provided, however, that the amount by which the new adjusted fair market value in each case is greater than or less than the estimated fair market value originally set forth above shall not exceed the aggregate amount by

which the actual Development Costs are greater than or less than the Budget. If Tenant shall disagree with or dispute the actual Development Costs indicated in Landlord's notice, the Parties shall use their reasonable best efforts to settle the disagreement or dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If, however, the Parties do not reach such solution within a period of ten (10) Business Days after Landlord delivers its notice of actual Development Costs then, (i) upon written notice to arbitrate by either Party delivered to the other within five (5) Business Days after the end of the ten (10) Business-Day negotiating period, all such disagreements and disputes shall be finally settled according to the dispute resolution provisions set forth in Section 6.14 of this Lease, or (ii) if neither Party timely delivers the requisite notice to arbitrate within such five (5) Business Days, then Landlord's notice to Tenant of actual Development Costs shall be conclusive.

Non-Profit Status. Notwithstanding anything herein to the contrary, if Tenant (or 2.5 any successor or assignee of Tenant) shall at any time during the Term cease to be an organization qualifying for an exemption from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (a "Non-Profit Company"), or if this Lease is assigned, transferred or subleased, by operation of law or otherwise, to an entity which is not a Non-Profit Company, Landlord shall have the right to terminate this Lease without further liability or obligation to Tenant by providing Tenant with twenty (20) Business Days prior written notice, provided, however, that in the event of Tenant's failure to qualify as a Non-Profit Company (but not in the event of an assignment or sublease to a Non-Profit Company), if before the effective date of termination of this Lease, Tenant cures such failure and again qualifies as a Non-Profit Company, Landlord's termination notice shall be revoked and null and void and this Lease shall continue in full force and effect subject to the terms and conditions of this Lease, including Landlord's rights under this Section 2.5. Tenant (or any successor or assignee of Tenant) shall notify Landlord in writing immediately upon losing its status as a Non-Profit Company, or upon learning or determining that such status may be in jeopardy.

ARTICLE III Base Rent, Security Deposit and Guaranty

3.1 <u>Base Rent</u>. The fixed annual rent (the "Base Rent") shall be paid commencing on the Rent Commencement Date and thereafter in monthly installments in advance on the first Business Day of each and every calendar month during the Term as set forth on Exhibit H attached to and made a part of this Lease, subject to adjustment pursuant to <u>Section 3.6</u>, if applicable.

3.2 Additional Rent.

3.2.1 The Base Rent shall be net to Landlord, except as expressly provided otherwise in this Lease, so that all impositions, insurance premiums, utility charges, maintenance, repair and replacement expenses, payments or charges under covenants, conditions and restrictions now or hereafter of record, all expenses relating to compliance with Legal Requirements, capital replacements, and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Premises (excepting only Landlord's obligations expressly set forth in this Lease) which may arise or become due to Landlord or third parties during the Term or by reason of events occurring during the Term of this Lease shall be paid or discharged by Tenant, at Tenant's sole cost and expense (all charges

payable by Tenant other than Base Rent, however denoted, are hereinafter collectively referred to as "Additional Rent"). Base Rent and Additional Rent are sometimes hereinafter collectively referred to as "Rent" or "Rents."

3.2.2 Together with, and in addition to, any payment of Rent or other sum(s) payable to or for the benefit of Landlord under this Lease, Tenant shall pay to Landlord, further as Additional Rent, a sum equal to the aggregate of any excise, sales, occupancy, franchise, privilege, rental, or transaction privilege tax on, or of any similar tax now or in the future levied, assessed, or imposed by any governmental authority upon, Landlord or the Premises as a result (and to the extent) of payments comprising Rent under this Lease, or as a result of Tenant's use or occupancy of the Premises.

3.3 Payment of Rent.

- 3.3.1 Tenant covenants and agrees to pay Base Rent and Additional Rent. Tenant shall pay the Base Rent and Additional Rent promptly when due without notice or demand therefor and without any abatement, deduction or set off for any reason whatsoever unless expressly provided in this Lease.
- 3.3.2 In addition to any other remedies Landlord may have under this Lease, if any Base Rent or Additional Rent payable hereunder to Landlord is not paid within five (5) Business Days after the due date therefor, Tenant shall pay to Landlord an administrative fee equal to 5% of the overdue payment and, in addition, such overdue payment shall bear interest at the rate of ten percent (10%) per annum (the "Interest Rate") from the due date thereof until paid, and the amount of such interest shall be Additional Rent.
- 3.3.3 If the Rent Commencement Date or the Expiration Date occurs on a day other than the first day of a calendar month, the Base Rent and all Additional Rent for the partial calendar month in which the Rent Commencement Date or the Expiration Date occurs shall be prorated and the Base Rent for the partial calendar month in which the Rent Commencement Date occurs shall be paid on the Rent Commencement Date.
- 3.3.4 No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Base Rent or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law provided.
- 3.3.5 Tenant's failure to pay Additional Rent shall be considered a failure to pay Base Rent hereunder and Landlord shall be entitled to all rights and remedies provided herein and by law in connection therewith.

3.4 Subordination of Management Agreements.

3.4.1 Tenant acknowledges that the Lease (including all renewals, extensions, modifications, or amendments of or to the Lease) shall at all times be superior to all rights of Lighthouse to receive any fee or services payment of any kind under the Management Agreement (including, without limitation, the "Service Fee" defined thereunder). Accordingly, the

Management Agreement shall be, and is, subject, subordinate, and inferior to the Lease, and to all renewals, extensions, modifications, or amendments of the Lease; the terms of the Lease (and of the subordination agreement required under Section 3.4.2, below) shall govern the rights of Landlord notwithstanding any contrary provision of the Management Agreement; and no fee or services payment of any kind due or owing under the Management Agreement may be paid by Tenant or Subtenant to Lighthouse until any and all amounts then due or owing under the Lease shall have been paid to Landlord. Notwithstanding the foregoing, Tenant may reimburse Lighthouse for Lighthouse's out-of-pocket expenses, advancements, fees, or loans incurred under Sections 2.25, 7.4, 7.7, and 7.8 of the Management Agreement notwithstanding that certain amounts may then be due or owing to Landlord under the Lease.

- 3.4.2 On or before the Effective Date, Tenant shall cause Lighthouse to deliver to Landlord a Subordination of Management Agreement, duly executed by Lighthouse and in substantially the form of the agreement set forth on Exhibit C-1 attached to and made a part of this Lease, by which Lighthouse shall subordinate all of its right, title, and interest in and to the Management Agreement to the rights of Landlord under the Lease, including (without limitation) to the rights of Landlord to receive payment of Rent and of all other sums due or owing under the Lease.
- 3.5 <u>Lease Guaranty</u>. Lighthouse (the "Guarantor") shall provide a lease guaranty ("Guaranty") in accordance with the terms and conditions of the Guaranty annexed hereto as <u>Exhibit C-2</u>.
- 3.6 Adjustment of Base Rent Upon Substantial Completion of Landlord's Work. Landlord and Tenant acknowledge that one factor in determining the fair rental value for the Premises under this Lease is the total Development Costs, and that the Base Rent set forth above has been determined, in part, using the Budget. Accordingly, on or before the later to occur of (i) the sixtieth (60th) Business Day after the Rent Commencement Date or (ii) the twentieth (20th) Business Day after Landlord shall have closed its permanent financing for the Premises—though in no instance later than the three hundred sixtieth (360th) Business Day after the Rent Commencement Date—Landlord shall notify Tenant of the actual Development Costs, and if the actual Development Costs differ from the Budget, Landlord shall provide Tenant with an amendment to this Lease setting forth a revised schedule of Base Rent, which shall be determined by increasing or decreasing the Base Rent set forth in Section 3.1 above during the Term by such amounts as may be reasonably required, as determined by Landlord in good faith, in order to ensure that Landlord receives the same rate of return on its capital investment in the Premises as it would have received had the actual Development Costs been equal to the Budget. Upon receipt of Landlord's good faith estimate of revised Base Rent by Tenant, Tenant shall have ten (10) Business Days to (i) make its own determination of final Development Costs and increased or decreased Base Rent based upon actual Development Costs, and (ii) deliver to Landlord written notice of Tenant's own determination of final Development Costs and adjustment to Base Rent. If Tenant's calculation of adjusted Base Rent shall deviate from Landlord's calculation by a factor of less than ten percent (10%), then Landlord's determination of the final Development Costs and Base Rent shall be binding upon the Parties. If Tenant's calculation of increased or decreased Base Rent shall deviate from Landlord's calculation by a factor of ten percent (10%) or more, however, then the Parties shall use their reasonable best efforts to settle the deviation. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If, however, the Parties do not reach such solution within a period of ten (10) Business Days after Tenant

delivers to Landlord written notice of Tenant's own determination of final Development Costs and adjusted Base Rent, then, (i) upon written notice to arbitrate by either Party delivered to the other within five (5) Business Days after the end of the ten (10) Business-Day negotiating period, all such disagreements and disputes shall be finally settled according to the dispute resolution provisions set forth in Section 6.14 of this Lease, or (ii) if neither Party timely delivers the requisite notice to arbitrate within such five (5) Business Days, then Landlord's notice to Tenant of actual Development Costs shall be conclusive. Once settled, the Parties shall execute an amendment to this Lease setting forth a revised schedule of Base Rent.

ARTICLE IV Use and Conduct of Business in Premises

4.1 Use.

- 4.1.1 Tenant shall use and occupy the Premises for the operation of the "Southwest Detroit Lighthouse Charter Academy" a Michigan public school academy authorized pursuant to the Charter School Contract (as defined below), and for associated supporting activities (including but not limited to specials rooms, multi-purpose rooms, administration, cafeteria, nurse's office, science laboratories, gymnasium, locker rooms, arts and crafts, ceramics, before-care, after-care, tutoring, enrichment and enhancement programs, and the like) consistent with operation of the charter school authorized pursuant to the Charter School Contract (the "Permitted Use"), and for no other purpose whatsoever without the prior written consent of Landlord. Tenant shall maintain in good standing and in full force and effect the Contract to Charter a Public School Academy and Related Documents issued by The Grand Valley State University Board of Trustees issued to Southwest Detroit Lighthouse Charter Academy Confirming the Status of Southwest Detroit Lighthouse Charter Academy as a Public School Academy (the "Charter School Contract"), issued under Michigan Compiled Laws § 380.503 and dated as of July 1, 2013, and shall take all actions necessary to renew such charter during the Term of this Lease.
- Tenant acknowledges the following: (i) that it has reviewed all zoning ordinances, land use restrictions, and similar limitations affecting the Premises, as well as all agreements entered into under the same; (ii) that all such ordinances, restrictions, limitations and agreements constitute Legal Requirements with which Tenant shall comply according to the terms of this Lease; and (iii) that Tenant's failure or inability, at any time after the Commencement Date, to comply with such ordinances, restrictions, limitations and agreements shall not give rise to any right in Tenant to terminate this Lease. Furthermore, if, after the Commencement Date, any governmental license, certificate, approval, or permit, including without limitation, the Charter School Contract, shall be required for the proper and lawful conduct of the Permitted Use in the Premises or any part thereof pursuant to any Legal Requirement, Tenant, at its sole cost and expense, shall diligently and duly procure and thereafter maintain such licenses, certificates, approvals, permits and Charter School Contract during the Term hereof, and Tenant shall submit such licenses, certificates, approvals, permits and Charter School Contract (and all applications therefor) to Landlord for inspection promptly upon request. Landlord agrees to cooperate with Tenant, at no cost, expense or liability to Landlord, in connection with Tenant so procuring all such licenses certificates, approvals, permits and Charter School Contract. Tenant shall at all times during the Term hereof comply with the terms and conditions of each such license, certificate, approval, permit and Charter School Contract. If Tenant fails, for any or no reason

whatsoever, to obtain any or all licenses, certificates, approvals, permits or Charter School Contract necessary for the operation of Tenant's business at the Premises as required by this Lease, such failure shall not affect, reduce or diminish Tenant's obligations under this Lease. Notwithstanding the foregoing, the Parties expressly hereby agree that Tenant's acknowledgement and obligations hereunder shall not be deemed in any way to diminish Landlord's obligations under Section 6.4 of this Lease,

4.1.3 Tenant shall not use or permit the use of the Premises or any part thereof in any way which would violate any (i) the Certificate of Occupancy for the Premises or the Building, (ii) the Charter School Contract, (iii) the Governmental Approvals, or (iv) any Legal Requirements, and Tenant shall not suffer or permit the Premises or any part thereof to be used in any manner or anything to be done therein or anything to be brought into or kept therein which would in any way impair the proper and efficient heating, cleaning or other servicing of the Building or the Demised Premises. Neither shall Tenant commit or suffer to be committed any waste at the Premises.

4.2 Hazardous Materials.

Tenant represents, warrants and covenants that during the Term of the Lease it shall not use nor cause to be used nor store any Hazardous Materials within the Premises or dispose of any Hazardous Materials at or from the Premises which violates applicable Legal Requirements and Insurance Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. In addition, Tenant shall notify Landlord, within twenty-four (24) hours of obtaining knowledge thereof, of any release of Hazardous Materials on the Premises. Nothing herein shall prohibit Tenant from (i) using cleaning fluid and supplies customarily used in school facilities, (ii) chemicals and other laboratory materials customarily used in science labs, (iii) medical office supplies, medical equipment, pharmaceuticals and first aid kits customarily stored and used in school nurse's offices, and (iv) arts and crafts materials customarily used in school facilities, any of which may constitute Hazardous Materials but which are customarily present in schools; provided that such use and storage in the Premises is in strict compliance with Legal Requirements and all such Hazardous Materials are removed from the Premises on or before the expiration or sooner termination of the Lease. Upon request by Landlord, Tenant shall submit to Landlord annual reports regarding Tenant's use, storage, and disposal of any of the Hazardous Materials, such reports to include information regarding continued Hazardous Materials inspections, personal interviews, and federal, state and local agency listings. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's reasonable request concerning Tenant's best knowledge and belief regarding the presence or absence of Hazardous Materials on the Premises. Tenant shall keep the Premises free from mold, mildew, asbestos, lead based paint and any and all other bacteria, fungi, substances and materials in quantities or concentrations that have been found to be harmful to the health or safety of any occupants of the Premises (any of the same being a "Dangerous Condition"). If Tenant becomes aware of any Dangerous Condition coming into existence after the Commencement Date of the Term, Tenant shall immediately notify Landlord of such and shall initiate and thereafter diligently prosecute to completion all actions necessary pursuant to Legal Requirements to investigate, assess, respond to, remove, abate, contain, encapsulate, sample, clean up, monitor or remediate such Dangerous Condition. All of the foregoing work shall be performed at Tenant's sole cost and expense, in a first-class, workmanlike manner and in compliance with all requirements of Legal Requirements.

Tenant shall provide Landlord advance notice of any activities to be undertaken by Tenant pursuant to this paragraph, and shall keep Landlord apprised of the progress and results of same.

- 4.2.2 In addition, Tenant shall, at all times during the Term, carry out all measures reasonably necessary to assure that the Premises shall remain in full and timely compliance with the Due Care Plan, and so shall undertake all acts and measures reasonably necessary to assure and maintain the same.
- 4.2.3 Tenant shall, in accordance with all Legal Requirements and to Landlord's reasonable satisfaction, remove any and all Hazardous Materials placed in the Premises by Tenant or by its agents, invitees, employees or its contractors, and Tenant shall be responsible for all costs including, but not limited to, those resulting from monitoring, clean-up or compliance in accordance with all Legal Requirements incurred with respect to any Hazardous Materials placed in the Premises during installation of Tenant's Removable Property and after the Commencement Date, and shall be responsible for all such costs incurred with respect to any Hazardous Materials placed in, on or under the Premises by Tenant or its agents, invitees, employees or contractors. Tenant shall indemnify and hold Landlord and each other Landlord Party harmless from and against any and all costs, claims, suits, causes of action, losses, injuries or damage, including without limitation, personal injury damage (including death) as well as damage to property as well as any and all sums paid for settlement of claims, reasonable attorney's fees, consultant and expert fees arising during the Term as a result of a breach of this <u>ARTICLE IV</u> or resulting from the presence or removal of Hazardous Materials from the Premises.

ARTICLE V Real Estate Taxes

- 5.1 Obligation to Pay Real Estate Taxes. Tenant shall pay one hundred percent (100%) of all Real Estate Taxes ("Tenant's Tax Payment") that shall become due and payable during the Term of the Lease as Additional Rent, paying the same directly to the applicable taxing authority at least five (5) Business Days before the date such taxes are due and payable. Landlord shall pay all Real Estate Taxes attributable to any period before the Rent Commencement Date and after the expiration or termination of the Lease. Landlord shall give notice to Tenant of all Real Estate Taxes payable by Tenant hereunder of which Landlord at any time has knowledge within ten (10) Business Days after receipt of notice thereof.
- estate taxes and assessments, government levies, municipal taxes, county taxes and assessments (whether general or special, ordinary or extraordinary, unforeseen or foreseen) and gross receipts and rental taxes incurred in the use, occupancy, ownership, operation, leasing or possession of the Premises, which are or may be assessed, levied or imposed, less any credit or abatement applicable thereto, including all credits or discounts allowed for early payments, whether or not such early payment is actually made. Except as specifically provided under Section 3.2.2, Real Estate Taxes shall not include: (i) any municipal, state or federal net income or excess profits taxes assessed against Landlord, or any municipal, state or federal capital levy, estate, capital gain, succession, inheritance or transfer taxes of Landlord, or corporation franchise taxes imposed upon Landlord or any owner of the fee of the Premises (except that any gross receipts tax and any rental tax shall be considered Real Estate Taxes); (ii) any correction of or supplement to any tax or assessment for any period before the Commencement Date; (iii) penalties incurred as a result of Landlord's negligence, inability or unwillingness to make Real Estate Tax payments or to file any

tax or informational returns when due (unless such penalties result from Tenant's failure to make timely payment of Real Estate Taxes); or (iv) water and sewer fees and utility charges required to be paid by Tenant pursuant to any other provisions of this Lease. In the event of a special assessment for any public or private improvement, the life of which extends beyond the Term, the assessment for such improvement, and Tenant's Tax Payment shall only include the amortized portion over the life of the improvement, and Tenant's Tax Payment shall only include the amortized portion of such assessment for each Lease Year during the Term. Tenant agrees to pay any Real Estate Taxes sufficiently in advance to achieve any available discounts or other savings. All assessments which may be paid in installments shall be paid by Tenant in the maximum number of installments permitted by law and not included in Real Estate Taxes except in the year in which the assessment is actually paid on a case (non-accrual) basis.

- 5.3 <u>Apportionment for Partial Year</u>. Landlord and Tenant shall adjust pro rata the Real Estate Taxes for and with respect to any portion of the Term which does not include an entire fiscal tax year.
- 5.4 <u>Right to Seek Exemption</u>. If the Premises are (or during the Term become) eligible for exemption from Real Estate Taxes under controlling Legal Requirements, then the Parties shall cooperate to apply for and obtain any exemption from Real Estate Taxes for which the Premises may qualify. In connection with such efforts, Landlord shall deliver to Tenant any documents and other information currently within Landlord's possession or under its control, prepare and execute such others documents, and generally take such further reasonable measures as may be required to enable or obtain such exemption. Without limiting the foregoing, Landlord expressly covenants that, if necessary to enable or obtain such exemption, Landlord shall also exercise reasonable efforts to cooperate with Tenant to restructure certain pertinent conveyances of interests in the Premises as needed to optimize the likelihood of enabling or obtaining such an exemption. Landlord shall bear the ordinary cost of such reasonable efforts, but shall be entitled to reimbursement from Tenant for costs incurred in connection with any extraordinary measures pursued hereunder. Finally, Landlord agrees to cooperate with Tenant, at no cost, expense or liability to Landlord, to execute any documents required to be executed by the owner of the Premises for Tenant to obtain any other tax exemption credits, refunds or abatements.
- 5.5 Right to Contest. Tenant shall have the right, at Tenant's sole cost and expense, to contest the validity or amount of the assessed valuation or Real Estate Taxes for any real estate fiscal tax year, by appropriate proceedings in the name of Landlord or Tenant, or both, provided that the Premises are not by reason of such contest placed in jeopardy of any tax or similar foreclosure proceeding. Within a reasonable time after demand therefor, Landlord shall execute and deliver to Tenant any documents and other information reasonably required to enable Tenant to prosecute any such proceeding, and Landlord shall use commercially reasonable efforts to provide Tenant, in time to permit Tenant to undertake such contest, with all pertinent data required therefor. Any credit, refund or abatement of Real Estate Taxes relating to any period subsequent to the Rent Commencement Date and before the expiration of earlier termination of this Lease shall belong to and be paid to Tenant. Tenant shall indemnify and hold Landlord and all Landlord Parties harmless from any against all loss, cost liability or expense arising from or in any way related to Tenant's contest of Real Estate Taxes.
- 5.6 <u>Personal Property Taxes</u>. Tenant shall be liable for and shall pay, at least ten (10) Business Days before delinquency, all taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's

equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property, or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property of Tenant, and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof (but under protest only if requested by Tenant), then Tenant shall, within twenty (20) Business Days after receiving notice thereof, repay to Landlord (as Additional Rent) the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

ARTICLE VI Landlord's Work; Delivery of Possession; Commencement Date; Tenant's Installations

6.1 <u>Landlord's Work</u>. Landlord shall, at Landlord's sole expense, acquire title to the Premises and commence and exercise all reasonable efforts to cause to be completed the improvements described in the Development Summary annexed hereto as <u>Exhibit D</u> and shown in the schematic plans identified on <u>Exhibit E</u> annexed hereto (collectively, the "Plans and Specifications"). The acquisition of the Premises and the construction and completion of the improvements described in the Plans and specifications is referred to herein as "Landlord's Work".

6.2 <u>Intentionally Omitted.</u>

- 6.3 Construction of the Landlord's Work. Landlord's Work shall be constructed (i) in a good and workmanlike manner substantially in accordance with the Plans and Specifications, (ii) in compliance in all material respects with all Legal Requirements and Insurance Requirements, (iii) in compliance in all material respects with all covenants, conditions and restrictions encumbering the Premises, and (iv) such that no building, structure or improvement shall encroach upon or under the property of any other person or entity. Furthermore, Landlord's Work shall include making available at the Premises such utility services (including, without limitation, water, sewer, electricity, natural gas and telephone service) as are required by Tenant and are readily available at or near the boundary of the Premises. Landlord shall use reasonable efforts to achieve Substantial Completion of Landlord's Work on or before August 1, 2013 (the "Target Commencement Date"). If for any reason Landlord cannot deliver possession of the Premises to Tenant and achieve Substantial Completion on or before the Target Commencement Date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the Term, but in such case. Tenant shall not be obligated to pay Rent or perform any other obligation of Tenant under the terms of this Lease, except as may be otherwise provided in this Lease, until the Rent Commencement Date.
- 6.4 <u>Substantial Completion of Landlord's Work</u>. "Substantial Completion" of Landlord's Work shall be deemed to have occurred and Landlord's Work shall be deemed "Substantially Complete" when (i) all governmental inspections required for the Landlord's Work have been successfully completed and temporary or permanent Certificates of Occupancy (or its equivalent) and other municipal permits or approvals for Premises have been obtained, in each case if and to the extent required for Tenant to occupy and use the Premises for the Permitted Use, and (ii) Landlord's Work is completed in all material respects in accordance with the Plans and Specifications (except for any Punchlist Items) so that Tenant can commence beneficial use

and occupancy of the Premises as intended. Landlord shall exercise commercially reasonable efforts to complete the Punchlist Items as soon as conditions reasonably permit, and Tenant shall afford Landlord access to the Premises for such purposes; provided, however, without Tenant's permission, Landlord shall not perform any construction during any time that school is in session and students are on the Premises. Within ten (10) Business Days after Substantial Completion, Landlord and Tenant shall conduct a walkthrough of the Premises and jointly prepare a list of Punchlist Items. Without limitation of the foregoing, if any of Landlord's Work is delayed in order to accommodate the installation of furniture and equipment by Tenant including, without limitation, Tenant's Removable Property or by any other Tenant Delay, then Landlord's Work shall be deemed Substantially Complete on the date on which it would have occurred but for such accommodation or other Tenant Delay. Tenant shall give Landlord notice, not later than two (2) calendar months after the Commencement Date of any respects in which Landlord has not completed the Punchlist Items in accordance with the terms of this Lease. Except as identified in any such notice from Tenant to Landlord, Tenant shall have no right to make any claim that Landlord has failed to complete the Punchlist Items in accordance with the terms of this Lease or to require Landlord to perform any further work. Upon timely request by Tenant and at Tenant's sole expense, Landlord agrees to use commercially reasonable efforts to enforce any warranties that may be applicable to Landlord's Work, and to assign such warranties (to the extent they remain in force) to Tenant upon transfer of the Premises to Tenant pursuant to the Option Agreement.

- 6.5 <u>Budget</u>. Landlord and Tenant have approved a budget for the Development Costs, including a contingency of 10% of all such Development Costs (the "**Budget**"), a copy of which is attached hereto as <u>Schedule E-1</u>. The aggregate amount of the Budget is currently \$7,463,773. In no event may Landlord be required to incur costs (including, without limitation, hard and soft costs) associated or in connection with the Landlord's Work which will cause the Development Costs to exceed the Budget. If at any point it becomes apparent that the Landlord's Work will cause the Development Costs to exceed the Budget, Landlord and Tenant shall meet, consult and negotiate with each other in good faith about reducing the scope of the Landlord's Work so that the Budget will not exceed the Budget Amount; provided, however, that if Landlord and Tenant are unable to agree on such scope reduction within five (5) Business Days after the date Landlord notifies Tenant of the need to do so, the determination shall be made by Landlord within one (1) Business Day after such five (5) Business Day period.
- 6.6 Tenant Delay. If the Substantial Completion of Landlord's Work shall be delayed as the result of (i) any request by Tenant that Landlord delay the commencement or completion of Landlord's Work for any reason; (ii) any change in any of the Plans and Specifications requested by Tenant; (iii) any change in scope pursuant to Section 6.5 above; (iv) any interference by Tenant (including, without limitation, any delay associated with Tenant's early access pursuant to the Premises pursuant to Section 6.9 or otherwise) with Landlord's Work; (v) any other act or omission of Tenant or its officers, agents, employees or contractors; or (vi) any reasonably necessary displacement of any of Landlord's Work from its place in Landlord's construction schedule resulting from any of the causes for delay referred to in this Section 6.6 and the fitting of such Landlord's Work back into such schedule (each a "Tenant Delay"); then the Substantial Completion of Landlord's Work, as determined pursuant to Section 6.4, shall be deemed to have occurred on the date it would have otherwise occurred absent the Tenant Delay. If a delay in Substantial Completion of Landlord's Work under Section 6.4 shall occur as a result of an Unavoidable Delay, and such Unavoidable Delays would not have occurred but for a Tenant Delay, such Unavoidable Delay shall also constitute Tenant Delay.

- 6.7 <u>As-Built Documents</u>. Landlord shall (or shall cause Landlord's contractor or other agent to) maintain a record of the drawings, specifications, addenda, change orders, change directives and other modifications, and marked currently to record field changes and selections made during construction (the "As-Built Documents"). If such As-Built Documents shall be provided to Landlord in electronic format(s), Landlord shall (or shall cause Landlord's contractor or other agent to) provide copies thereof to Tenant, in electronic format(s), upon Tenant's written request for the same.
- 6.8 <u>Possession of Premises</u>. Tenant shall not be liable to Landlord for the payment of Base Rent or Additional Rent or the payment of any other obligation to be paid by Tenant under this Lease until the Rent Commencement Date. The entry by Tenant for the purpose of inspection or installation of Tenant's Removable Property shall not be considered occupancy for purposes of this Lease and shall not trigger Tenant's obligation to pay Rent under this Lease.
- 6.9 <u>Tenant's Installations</u>. Before the Commencement Date, Landlord shall reasonably cooperate with Tenant, at no cost to Landlord, to facilitate Tenant's installation of Tenant's Removable Property. The following shall be conditions of Tenant's right to enter the Premises as provided herein before the Commencement Date: (i) that such entry shall not interfere with construction of Landlord's Work; and (ii) any that such entry shall be subject to such rules and regulations as Landlord may reasonably promulgate and Tenant shall fully cooperate with Landlord.
- 6.10 Tenant's Insurance for Tenant's Removable Property. Tenant shall secure and maintain, at its own expense, the following insurance coverage in full force and effect with respect to the Premises at all times during the design, construction and installation of Tenant's Removable Property and shall require any and all contractor(s) and all subcontractors to maintain the same at all times during the design, construction and installation of Tenant's Removable Property:
- 6.10.1 property insurance written on an "all risk" builders risk or equivalent policy form for the full replacement cost of Tenant's Removable Property and with deductibles not in excess of commercially reasonable amounts; and
- 6.10.2 Commercial General Liability insurance on an occurrence basis with a combined limit for bodily injury, personal injury and property damage and products and completed operations of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies. Limits shall apply on a per project basis. The policy shall include the Landlord and, if requested by Landlord, Landlord's lender as additional insureds.
- 6.10.3 Worker's Compensation insurance to the extent required, and in the amounts required by applicable Legal Requirements covering Tenant and its employees, as well as employer's liability insurance in the amount of \$1,000,000 per accident, \$1,000,000 per illness (per employee), and \$1,000,000 per illness (aggregate). If borrowed employees are used (including employees from a temporary employment agency) to perform services, the insured shall require the primary employer to provide an alternate employer endorsement showing the insured in the schedule as the alternate employer. The Worker's Compensation policies shall contain a waiver of subrogation provision requiring the insurance carriers to waive all rights against Landlord, all other Landlord Parties, and any lender.

- 6.10.4 Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with Tenant and/or its contractors or subcontractors' operations in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of Tenant and/or its contractors and subcontractors who use personal vehicles within the course and scope of their employment or service.
- 6.11 Tenant's Indemnity for Tenant's Installations. Tenant shall indemnify and hold harmless Landlord and all other Landlord Parties from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the installation of Tenant's Removable Property, to the extent caused by any act or omission of Tenant or Tenant's contractor(s), any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, and which involves bodily injury, sickness, disease or death, or injury to or destruction of property, including the loss of use resulting therefrom. In any and all claims against Landlord or any other Landlord Party, by any Tenant Party, the indemnification obligation under this Section 6.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant or such Tenant Party under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 6.12 <u>Tenant's Removable Property</u>. All articles of personal property and all business and trade fixtures, machinery, workstations, equipment, furniture and other property and equipment installed or placed by Tenant in the Premises (whether affixed or unaffixed to the Premises), owned and used by Tenant for the Permitted Use ("**Tenant's Removable Property**") shall remain the property of Tenant and may be removed by Tenant at any time on or before the date of expiration of this Lease in accordance with the provisions of <u>ARTICLE X</u> of this Lease; provided Tenant restores any damage caused by such removal.
- Dispute Resolution. If the Parties shall disagree with respect to any matter covered in this ARTICLE VI, and the Parties are unable to reach agreement thereon within five (5) Business Days, such dispute may be submitted by either Party to arbitration for expedited proceedings under the Fast Track Procedures provisions (currently, Rules F-1 through F-13) of the Arbitration Rules of the Construction Industry of the American Arbitration Association (the "AAA"), with both Parties agreeing to waive the \$75,000 qualification in such rules. In any case where the Parties utilize such expedited arbitration: (i) the Parties may not object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance with Rule F-4 (except that any objection shall be made within five (5) Business Days from transmission of the list), (ii) the Notice of Hearing shall be given at least ten (10) Business Days in advance of the hearing, (iii) the first hearing shall be held within ten (10) Business Days after the appointment of the arbitrator, and (iv) each Party in such arbitration shall pay its own attorneys' fees and other costs of such arbitration and the losing Party shall pay the costs charged by the AAA and/or the arbitrator. Judgment upon any award rendered in any arbitration held pursuant to this <u>Section 6.13</u> may be entered in any court having jurisdiction, and in connection therewith, the arbitrators shall be bound by the provisions of this Lease, and shall not add to, subtract from or otherwise modify such provisions. Prior written notice of application by either Party for arbitration shall be given to the other at least ten (10) Business Days before filing of any demand for arbitration hereunder. Any award of an arbitrator rendered hereunder shall be subject to confirmation and entry of judgment thereon in any court of competent jurisdiction sitting in Wayne County, Michigan, and the Parties hereby consent to the jurisdiction of such court. The

costs and administration expenses of each arbitration hereunder and their apportionment between the Parties shall be borne equally by the Parties, and each Party shall be responsible its own attorneys' fees and expert witness fees. In connection with the foregoing, it is expressly understood and agreed that the Parties shall continue to perform their respective obligations under this Lease during the pending of any such arbitration proceeding hereunder (with any adjustments or reallocations to be made on account of such continued performance as determined by the arbitrator in his or her award).

ARTICLE VII Compliance with Legal Requirements; Reporting Requirements and Covenants

- 7.1 <u>Landlord's Compliance with Legal Requirements; Reporting Requirements and Covenants</u>. As of the Commencement Date, Landlord shall deliver the Premises to Tenant with the Premises and Landlord's Work (to the extent then completed) in compliance in all material respects with applicable Legal Requirements.
- 7.2 <u>Notices.</u> Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any Legal Requirement with respect to the Premises or the use or occupation thereof.
- 7.3 Tenant's Compliance with Legal Requirements. Tenant shall throughout the Term of this Lease, at Tenant's sole cost and expense, promptly comply or cause compliance with or remove or cure any violation of any and all Legal Requirements, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, unless due to Landlord's breach of its obligations hereunder. Without limiting the generality of the foregoing, it is specifically agreed that Tenant shall comply with all Legal Requirements and Insurance Requirements that require the installation, modification, addition, change, alteration, repair, replacement or maintenance of any fire-rated partition, gas, smoke, or fire or smoke detectors or heat sensors or alarm or any sprinkler, fire extinguishers or other system to extinguish fires. However, Tenant need not comply with any such Legal Requirements so long as Tenant shall be contesting the validity thereof, or the applicability thereof to the Premises, in accordance with Section 7.4.
- 7.4 Contest of Legal Requirement. Tenant, at its expense, after notice to Landlord, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Premises, of any Legal Requirement; provided that (i) Landlord shall not be subject to criminal penalty or to prosecution for a crime, or any other fine or charge, nor shall the Premises or the Building, or any part thereof, be subject to being condemned or vacated, nor shall the Building or Premises, or any part thereof, be subjected to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (ii) before the commencement of such contest, Tenant shall furnish to Landlord security in amount, form and substance satisfactory to Landlord and shall indemnify Landlord against the cost thereof and against all liability for damages, interest, penalties and expenses (including reasonable attorneys' fees and expenses), resulting from or incurred in connection with such contest or non-compliance; (iii) such noncompliance or contest shall not prevent Landlord from obtaining any permits, certificates of occupancy, licenses, amendments or renewals thereof in connection with the operation of or alterations to the Building; and (iv) Tenant shall keep Landlord advised as to the status of such proceedings. Tenant shall indemnify and hold Landlord and all Landlord Parties harmless from

and against all lost, cost, liability and expense arising from or in any way related to Tenant's contest of any Legal Requirement.

- 7.5 Reporting Requirements; Financial Covenants. Tenant shall maintain and make available to Landlord proper books of records and accounts reflecting all of its operations, with full, true, and correct entries of all of its dealings made substantially in accordance with practices generally used for public school accounting in the State of Michigan.
- 7.5.1 Without in any way limiting the foregoing, Tenant shall during the Term deliver the following documents to Landlord at the times specified therein:
- (a) A signed copy of the Charter School Contract contemporaneously with the execution of this Lease;
- (b) A signed copy of any subsequent modification or amendment to the Charter School Contract within ten (10) Business Days after the such modification or amendment is executed by the Authorizer and Tenant;
- (c) Copies of any material notices received from the Authorizer and concerning, or issued in connection with, the Charter School Contract within ten (10) Business Days after receipt by Tenant;
- (d) Copies, not less than ten (10) Business Days in advance of the scheduled meeting, of any notice(s) of any meeting(s) that shall be conducted by Tenant, in any part, as an open meeting under Michigan Compiled Laws §§ 15.261-.275;
- (e) Copies of all enrollment reports that Tenant may submit to the Michigan Department of Education (the "**Department**"), simultaneously with submission thereof to the Department;
- (f) Copies of all audited financial statements, audit reports (including financial, enrollment, participation, eligibility, and other audits of all kinds), and auditor management letters that Tenant must submit to the Authorizer under the Charter School Contract, simultaneously with submission thereof to the Authorizer; and
- (g) Copies of all school calendars that Tenant must submit to the Authorizer under the Charter School Contract, simultaneously with submission thereof to the Authorizer.

In addition, Tenant shall promptly provide Landlord with copies of such unaudited financial statements and unaudited enrollment, participation, eligibility, and other reports as Landlord may from time to time request.

- 7.5.2 During the Term of this Lease, Tenant:
- (a) Shall comply, and cause each of its agents, employees, invitees and contractors to comply, in all material respects, with all terms and provisions of the Charter School Contract;
- (b) Shall not voluntarily agree to any termination or amendment of the Charter School Contract without Landlord's prior written consent (which may be granted or withheld in

Landlord's sole discretion), nor voluntarily agree to any termination or modification of the Charter School Contract;

- (c) Shall not do, or permit or suffer to be done, any act or omission by Tenant, its agents, employees, contractors or invitees which is prohibited by the Charter School Contract, or which would constitute a violation or default thereunder, or result in a forfeiture, termination or non-renewal of the Charter School Contract or result in Tenant or the Charter School Contract being placed on academic probation by the Authorizer or other charter school governing authority.
 - 7.5.3 Tenant shall be in default of this Lease if any of the following occurs:
- (a) More than 20% of Tenant's total operating budget is expended on facilities expenses, including the Rent due under this Lease; or
- (b) Tenant's total student enrollment is less than eighty percent (80%) of the scheduled enrollments set forth below for the applicable Lease Years:

• Lease Year 1: 271 students

• Lease Year 2: 309 students

• Lease Year 3: 356 students

• Lease Year 4: 404 students

• Lease Year 5: 451 students

ARTICLE VIII Indemnity and Insurance

8.1 Indemnification. Except to the extent resulting from the gross negligence or intentional misconduct of Landlord or any Landlord Party claiming indemnification, Tenant shall indemnify, defend, save and hold harmless Landlord and all other Landlord Parties from and against any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities (including, but not limited to, strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' fees and expenses, filing and other court costs) incurred in connection with or arising from any of the following: (i) the use, condition, operation or occupancy of the Premises, including, but not limited to, the presence of any Dangerous Condition; (ii) any activity, work, or thing done, or permitted or suffered by or through Tenant in or about the Premises; (iii) any acts, omissions, or negligence of Tenant or any Tenant Party; (iv) any claim of any students, staff, employees or other invitees of Tenant or any Tenant Party, including claims alleging breach or violation of such person's civil or legal rights; (v) any breach, violation, or nonperformance by Tenant or any Tenant Party, of any term, covenant, or provision of this Lease or any Legal Requirement; (vi) any injury or damage to the person, property or business of Tenant or any Tenant Party, or any other person entering upon the Premises under the express or implied invitation of Tenant; and (vii) any accident, injury to or death of persons or loss or damage to any item of property occurring at the Premises. If any action or proceeding is brought against Landlord or any Landlord Party by reason of any such indemnified claim as set

forth above, Tenant, upon notice from Landlord, will defend the claim at Tenant's sole cost and expense with counsel reasonably satisfactory to Landlord. If Landlord reasonably determines that the interests of Landlord or such Landlord Party and the interests of Tenant in any such action or proceeding are not substantially the same and that Tenant's counsel cannot adequately represent the interests of Landlord or such Landlord Party with respect to such indemnified claim as set forth above, Landlord shall have the right to hire separate counsel in any such action or proceeding and the costs and expenses thereof, including all attorneys' fees and expenses, shall be paid for by Tenant.

8.2 Tenant's Insurance.

- 8.2.1 Tenant covenants and agrees that from and after the Commencement Date and during the Term of this Lease and thereafter so long as Tenant is in occupancy of any part of the Premises or such longer period as specified herein, Tenant shall carry and maintain, at its sole cost and expense, the following types of insurance, naming Landlord and Landlord's lender as additional insured or loss payee, as applicable, in the amounts specified and in the forms hereinafter provided with insurance companies authorized to do business in the State of Michigan and rated A:IX or better in the most current edition of Best's Insurance Report or a Standard and Poor's rating of "AA" (or the then equivalent of such rating) ("Tenant's Insurance Requirements"):
- (a) <u>Commercial General Liability Insurance</u>. Tenant shall obtain and maintain Commercial General Liability insurance on the broadest forms available for similar risks, written on an "occurrence policy form," against all claims for bodily injury, disease or death, property damage, personal injury, premises operations, products and completed operations, consultants and independent contractors and contractual liability in an amount of not less than \$1,000,000 arising out of any one occurrence and \$2,000,000 in the annual aggregate, per location. The policy must include coverage for molestation and sexual abuse (unless provided under the professional liability policy required in this Section) and coverage for sports and athletic participation if applicable. The policy must include as insureds the Tenant's employees, volunteers and directors. The policy shall be endorsed to include Landlord, its managers, members, directors, officers, employees, agents, affiliates, successors and assigns and any lender as additional insureds on a primary and non-contributory basis. Tenant shall maintain the commercial general liability coverage as specified herein for a minimum of one year after termination of this Lease.
- (b) <u>Umbrella Liability Insurance</u>. Tenant shall obtain and maintain Umbrella Liability Insurance on the broadest forms available for similar risks, written on an "occurrence policy form," against all liability claims in an amount of not less than \$4,000,000 per occurrence and in the annual aggregate, per location. If liability coverage for the Premises is included under any blanket policy written on an aggregate form, then the annual aggregate limit of insurance applying solely to the Premises must be not less than \$5,000,000.
- (c) <u>Worker's Compensation / Employer's Liability</u>. Tenant shall obtain and maintain Worker's Compensation insurance to the extent required, and in the amounts required by applicable Legal Requirements covering Tenant and its employees and employer's liability insurance in the amount of \$1,000,000 per accident, \$1,000,000 per illness (per employee) and \$1,000,000 per illness (aggregate). If Tenant uses borrowed employees (including employees from a temporary employment agency) to perform services, it shall require the primary employer

to provide an alternate employer endorsement showing Tenant in the schedule as the alternate employer. The Workers' Compensation policies shall contain a waiver of subrogation provision requiring the insurance carriers to waive all rights against Landlord and all other Landlord Parties and any lender.

- (d) <u>Commercial Automobile Liability Insurance</u>. Tenant shall obtain and maintain Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with Tenant's operations in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The coverages must afford coverages to Tenant for Tenant's liability arising out of the use by employees, agents, and volunteers of Tenant utilizing personal vehicles within the course and scope of their employment or service.
- (e) Educators Liability Insurance. Tenant shall obtain and maintain Educators Liability insurance (errors and omissions) with limits of insurance no less than \$1,000,000 per claim and \$2,000,000 in the aggregate. Coverage shall include employment practices, student liability, corporal punishment and sexual misconduct. This policy must also provide coverage for third party liability losses, including losses that arise out of local, state, or federal anti discrimination laws, except that Tenant may instead to elect provide coverage for losses that arise out of local, state, or federal antidiscrimination laws through a separate employment practices liability insurance (EPLI) policy that has limits of not less than \$1,000,000 per claim, \$2,000,000 in the aggregate. Tenant shall maintain the insurance required in this subsection for a minimum of three years after termination of this Lease.
- (f) <u>Crime / Employee Theft</u>. Tenant shall obtain and keep in force a Crime / Employee Theft insurance policy covering its employees, volunteers and the acts of any third party vendor or contractor that otherwise might have the opportunity to misappropriate Tenant's property or funds, with limits of not less than \$500,000 per occurrence.
- (g) <u>Personal Property Insurance</u>. Tenant shall obtain and maintain insurance coverage on all of Tenant's Removable Property. Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Tenant for the repair or replacement of Tenant's Removable Property. Tenant shall provide Landlord with written evidence that such insurance is in force no later than three (3) Business Days before the Commencement Date.
- (h) Other. In addition, Tenant shall obtain and maintain the following coverages:
- (i) Student Accident Insurance in an amount of not less than \$10,000 per occurrence;
- (ii) Directors' and Officers' Insurance in an amount of not less than \$1,000,000 per occurrence; and
- (iii) Any other commercially reasonable insurance types or amounts that Landlord or any lender requires.
- 8.2.2 <u>Blanket Policies</u>. Tenant may maintain any of its required insurance coverages under blanket policies of insurance covering said Premises and other premises of

Tenant, or companies affiliated with Tenant, provided that any such policy shall in all other respects comply with the requirements of this Lease.

Tenant's Policies and/or Certificates of Insurance. Each policy shall not have more than a \$25,000 deductible or retention for any occurrence, except for mandatory deductibles or retentions where required under local regulations, or when required by insurers for specific catastrophic perils. Tenant shall obtain, before the expiration date of each such policy, original policies (or renewals or extensions of the insurance afforded thereby), certified duplicates thereof or certificates thereof (together with copies of endorsements for each additional insured) acceptable to Landlord. The above mentioned policies, and proof of payment of all premiums therefor, are to be provided to Landlord at least five (5) Business Days before the Commencement Date and at least annually thereafter or as requested by Landlord. Each such policy shall provide that Landlord be given written notice at least five (5) Business Days before the expiration, material alteration, cancellation or non-renewal of any policies, and that any loss otherwise payable to them thereunder shall be paid notwithstanding any act or negligence on their part or that of the Tenant which might, absent such provision, result in a forfeiture of all or part of such insurance payment. If Tenant fails to furnish said notice or policies as provided in this Lease, and at the times herein provided, Landlord may obtain such insurance and the premiums on such insurance shall be deemed to be Additional Rent to be paid to Landlord upon demand. Tenant shall be responsible for the cost of any and all premiums on all such insurance to be carried by the Tenant. Final insurance policies shall be sent to the attention of: Canyon-Agassi Charter School Facilities Fund, L.P. c/o Canyon Capital Realty Advisors LLC, 2000 Avenue of the Stars, 11th Floor, Los Angeles, California 90067, Attn: Bari Cooper Sherman, Fax: (310) 272-1537.

8.3 Landlord's Insurance.

- 8.3.1 Landlord shall obtain and maintain, at Tenant's expense (including, without limitation, deductibles not to exceed \$50,000) all of the following (altogether, the "Landlord's Insurance"):
- Property insurance on an "All Risk" basis and for such other insurable hazards as, under good insurance practices, are insured against for other property and buildings similar to the Premises in nature, use, location, height, and type of construction. Such policy shall include all standard perils including wind. The amount of such insurance shall be not less than one hundred percent (100%) of the replacement cost without depreciation of the Premises. Such insurance policy shall contain an agreed amount endorsement and not subject to any form of coinsurance. Such insurance shall cover mechanical breakdown and testing, increased cost of Legal Requirements, insurance, costs of demolition and increased cost of construction as well as rent loss and business interruption coverage, including, business income and extra expense, for an extended period of indemnity of at least twelve (12) months. During the period of any construction, repair, renovation, restoration or replacement of the improvements or the Premises, Landlord shall obtain and maintain, at Tenant's expense (including, without limitation, deductibles), a completed value "All Risk" Builder's Risk Insurance policy for the full replacement cost of the Premises (including upgrades and any leasehold improvements but excluding Tenant's Removable Property and Alterations made by Tenant). The policy is to be written on a non-reporting basis, and in an amount not less than the total value of the Premises (less the value of such uninsurable items as land, site preparation, grading, paving, and parking lots). Such policy shall not contain a permission to occupy limitation. The policy shall contain an agreed amount endorsement and not subject to any form of coinsurance. Such policy shall not

have exclusions for sidewalks, retaining walls or underground property. The policy must not contain any "Protective Safeguard" endorsements limiting coverage. Coverage shall be provided for against the standard perils. Such policy shall include coverage for mechanical breakdown and testing, collapse, expediting expenses, demolition and increased cost of construction (for renovation and/or additions to existing structures), water damage, and permission for partial occupancy.

- (b) <u>Pollution and Environmental Impairment Liability insurance</u>, insuring Landlord (with both "first-party" and "third-party" coverages) against pollution-related liabilities arising with respect to the Premises, including (without limitation) bodily injury, property damage, remediation expenses (including investigation, monitoring, removal, and disposal), and defense costs (including adjustment and costs incurred in defending a claim) related to the same.
- (c) <u>Commercial General Liability and Umbrella Liability insurance</u>, on the broadest forms available for similar risks, written on an "occurrence policy form," and insuring against all claims for bodily injury, disease or death, property damage, personal injury, premises operations, products and completed operations, consultants and independent contractors and contractual liability, and including (without limitation) coverage for molestation and sexual abuse and coverage for sports and athletic participation if applicable. Landlord currently carries liability limits of \$35,000,000 per occurrence and in the aggregate. Landlord shall have no obligation to carry a specific limit, but rather may amend its limits from time to time in its sole discretion.
- 8.3.2 Tenant shall pay to Landlord, as Additional Rent, an amount equal to the premiums for the insurance coverages which Landlord maintains pursuant to this <u>ARTICLE VIII</u> attributable to each calendar year during the Term (the "**Premiums**"), such amount to be apportioned for any portion of a calendar year in which the Commencement Date falls or the Term expires. Upon a casualty, Tenant shall immediately pay to Landlord the applicable deductible under the insurance which Landlord is to or may obtain pursuant to this <u>ARTICLE VIII</u>.
- 8.3.3 Estimated payments by Tenant on account of the Premiums shall be made on the first Business Day of each and every calendar month during the Term of this Lease, in the fashion herein provided for the payment of Base Rent. The monthly amount so to be paid to Landlord shall be sufficient to provide Landlord by the time Premiums are due with a sum equal to Tenant's required payment, as reasonably estimated by Landlord from time to time, on account of the Premiums for the then current calendar year. Promptly after receipt by Landlord of bills for such Premiums, Landlord shall advise Tenant of the amount thereof and the computation of Tenant's total payment due on account thereof. If estimated payments theretofore made by Tenant for the calendar year covered by such bills exceed the required payment on account thereof for such calendar year, Landlord shall credit the amount of overpayment against subsequent obligations of Tenant on account of the Premiums (or promptly refund such overpayment if the Term of this Lease has ended and Tenant has no further obligation to Landlord); but if the required payments on account thereof for such calendar year are greater than estimated payments theretofore made on account thereof for such calendar year, Tenant shall pay the difference to Landlord within twenty (20) Business Days after being so advised by Landlord, and the obligation to make such payment for any period within the Term shall survive expiration of the Term.

- 8.3.4 Landlord shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises as required by this Lease.
- 8.4 <u>Waiver of Subrogation</u>. Notwithstanding anything to the contrary contained elsewhere in this Lease, neither Landlord nor Tenant shall be liable to the other Party or to any insurance company insuring the other Party by way of subrogated rights or otherwise, for any loss or damage caused by fire or any other hazard or peril covered by fire or extended coverage or all risk insurance or required to be covered by the insurance coverages under this Lease, or any resulting loss of income, even though such loss or damage may have been occasioned by the negligence of such Party, its agents or employees.
- Tenant's Risk; Landlord Not Responsible for Acts of Others. Tenant agrees to use and occupy the Premises at Tenant's own risk. Landlord shall not be liable to Tenant or any other Tenant Party for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or loss to Tenant's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, repairs or construction to any portion of the Premises. Nor shall Landlord be liable to Tenant or any other Tenant Party for any fire, robbery, theft, mysterious disappearance and/or any other crime or casualty, or any leakage in any part or portion of the Premises, or from water, rain or snow that may leak into, or flow from any part of the Premises, or from drains, pipes or plumbing fixtures at the Premises, or from the roof, street, subsurface or from any other place, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Premises. Notwithstanding the foregoing, however, Landlord shall in no event be exonerated from any liability to Tenant or any other Tenant Party, for any injury, loss, damage or liability to the extent such exoneration is prohibited by law. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk and hazard of Tenant, and neither Landlord nor any Landlord Party nor Landlord's insurers shall in any manner be held responsible therefor and in no event shall Landlord, or any other Landlord Party have any liability to Tenant or any Tenant Party based on any loss with respect to or interruption in the operation of Tenant's business. The provisions of this Section 8.5 shall be applicable from and after the execution of this Lease and until the end of the Term of this Lease, and during such further period as Tenant may use or be in occupancy of any part of the Premises. Landlord shall not be responsible or liable to Tenant, or any Tenant Party for any loss or damage to persons or property resulting from the negligence, acts or omissions of persons occupying space adjoining or adjacent to the Premises, or connected to the Premises, or occupying any other part of the Building, or of any of their respective agents, employees, contractors, invitees or customers, including, without limitation, caused by breaking or falling of electrical cables and wires, or the breaking, bursting, stoppage or leakage of water, gas, sewer or steam pipes.

ARTICLE IX Alterations

9.1 <u>Alterations</u>. Except as hereinafter provided, after completion of Landlord's Work in accordance with the Plans and Specifications, Tenant shall make no additions, installations, improvements, replacements and/or alterations in or to the Premises (hereinafter "Alterations") without the prior written consent of Landlord, which shall not be unreasonably withheld or

delayed. If Landlord fails to respond to a request for approval within five (5) Business Days of Tenant's request, then Tenant's written request shall be deemed disapproved by Landlord.

- 9.1.1 Notwithstanding the above, Tenant shall have the right to make from time to time, at its expense, non-structural Alterations to the interior of the Premises without obtaining Landlord's consent ("Permitted Alterations"); provided however, that such Alterations are not Material Alterations, provided further that Tenant notifies Landlord of the intended Alterations to the interior of the Premises in reasonable detail, together with an estimate of the cost thereof, at least ten (10) Business Days before its commencement of such Permitted Alterations. All Alterations made by or for Tenant shall be done in a good and workmanlike manner and diligently prosecuted to completion, in compliance with applicable Legal Requirements.
- 9.1.2 Alterations that (i) cost in excess of \$10,000 or (ii) are not in compliance with Legal Requirements or Insurance Requirements, or (iii) in Landlord's sole judgment, affect the Building Systems, the structural integrity of the Building or any part thereof, or the exterior of the Building or other structures on the Premises shall be deemed "Material Alterations" and shall not be performed without the prior written consent of Landlord, which consent shall be granted or withheld in Landlord's sole and absolute discretion.
- 9.1.3 If Landlord requires Tenant to remove a Material Alteration at the expiration of the Lease, Landlord shall notify Tenant of this effect simultaneously with Landlord's grant of approval of such Material Alteration. All Alterations, additions and improvements to the Premises (including fixtures and equipment) made by or for Tenant shall be done in a good and workmanlike manner and diligently prosecuted to completion, in compliance with applicable Legal Requirements and Insurance Requirements.
- (a) Any Alterations in or to the mechanical, electrical, plumbing, sanitary, heating, air conditioning, ventilation, life safety or other systems of the Building or to or affecting the roof or any other structural part of the Building, shall be performed only by contractor(s) approved by Landlord.
- 9.2 Review and Approval Solely for Tenant's Benefit. Tenant agrees that any review or approval by Landlord of Tenant's Alteration plans is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant with respect to the adequacy, correctness or efficiency thereof or otherwise.
- 9.3 Tenant's Obligation to Furnish Documents to Landlord. Tenant, at its expense, shall obtain (and furnish true and complete copies to Landlord of) all necessary governmental permits and certificates for the performance of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, with all Legal Requirements and Insurance Requirements, and with the plans and specifications submitted to, and approved by Landlord pursuant to Section 9.1 hereof. Alterations shall be performed in such manner as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operation of the Building, and if any such additional expense shall be incurred by Landlord as a result of Tenant's performance of Alterations, Tenant shall pay such additional expense upon demand as Additional Rent. Throughout the performance of Alterations, Tenant, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, employer's liability insurance, disability benefits insurance, property insurance, builder's risk insurance and general liability insurance, with completed operation endorsement, for any

occurrence in or about the Premises, and covering construction subcontractors and materialmen to be employed by Tenant, under which Landlord shall be named as additional insured, in such limits as Landlord may reasonably require, with insurers reasonably satisfactory to Landlord. Tenant shall furnish Landlord with reasonably satisfactory evidence that such insurance is in effect at or before the commencement of Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations.

- 9.4 <u>Notice of Violations</u>. Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services or materials done for or supplied to Tenant, or any Tenant Parties which shall be issued by any public authority having or asserting jurisdiction. However, nothing herein contained shall prevent Tenant from contesting, in good faith and at its own expense, any notice of violation; *provided* neither Landlord nor the Premises is adversely affected thereby.
- 9.5 <u>"As-Built" Drawings</u>. Tenant shall promptly upon the completion of a Material Alteration deliver to Landlord final "as-built" drawings certified by Tenant's architect of any Alterations Tenant has performed or caused to be performed in the Premises, and upon Landlord's request Tenant shall furnish updated drawings and specifications, if any, for Alterations in progress.
- 9.6 <u>Liens</u>. Tenant shall cause all contractors performing, and suppliers supplying materials for, Alterations shall be paid in full, so that the Premises and the Building shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. In addition, Landlord shall have the right at all times to post and maintain upon the Premises such notices as may be necessary or desirable to keep the Premises and Landlord free of lien from any mechanic, laborer, materialman, supplier or vendor.
- 9.6.1 Any mechanic's lien filed against the Premises for work claimed to have been done for, or for materials claimed to have been furnished to, Tenant shall be discharged by Tenant within fifteen (15) Business Days after such filing, by payment, filing of the bond required by law or otherwise, and Tenant shall provide satisfactory proof of such discharge to Landlord. In default thereof, Landlord may, upon ten (10) Business Days prior notice to Tenant, discharge any such mechanic's lien, by bond or payment, or otherwise, and the cost thereof shall be paid by Tenant to Landlord within ten (10) Business Days after demand. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's lien or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Premises. Tenant shall indemnify and hold Landlord and all other Landlord Parties harmless from and against any and all expenses, liens, claims, liabilities and damages based on or arising, directly or indirectly, by reason of the making of any alterations, additions or improvements by or on behalf of Tenant to the Premises under this Section, which obligation shall survive the expiration or termination of this Lease.
- 9.6.2 Tenant's Removable Property shall be fully paid for by Tenant in cash and shall not be subject to conditional bills of sale, security interests, chattel mortgages or other title retention agreements.

9.7 <u>Removal of Rubbish</u>. Tenant, at its sole cost and expense, shall remove and dispose (in accordance with all Legal Requirements and Rules and Regulations) all rubbish arising from Tenant's Alterations.

ARTICLE X Landlord's and Tenant's Removable Property

- 10.1 <u>Landlord's Property</u>. Other than Tenant's Removable Property, all fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, including Landlord's Work, whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, shall, upon the expiration or sooner termination of this Lease, be deemed the property of Landlord and shall not be removed by Tenant ("Landlord's Property").
- 10.2 <u>Tenant's Removable Property</u>. All of Tenant's Removable Property shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; <u>provided</u>, that if any of Tenant's Removable Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from the installation and/or removal thereof.
- Date (or within fifteen (15) calendar days after any earlier termination of this Lease, as the case may be), Tenant, at its expense, shall remove from the Premises all of Tenant's Removable Property (except such items thereof as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord), and Tenant shall repair any damage to the Premises or the Building resulting from removal of Tenant's Removable Property.
- Abandoned Property. Any other items of Tenant's Removable Property which shall remain in the Premises after the Expiration Date, or within twenty (20) Business Days following an earlier termination of this Lease, may at the option of Landlord be deemed abandoned, and in such case such items may either be retained by Landlord as its property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

ARTICLE XI Repairs and Maintenance

11.1 Tenant's Obligations.

as provided in <u>Section 11.2</u>, Tenant shall, at its expense, throughout the Term, maintain the Premises in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all mechanical, electrical, plumbing, life safety (including sprinkler systems), heating, ventilation, and air conditioning systems of the Building (the "Building Systems"), boilers, pressure vessels, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping,

driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Tenant is also responsible for keeping the roof and roof drainage clean and free of debris. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including (i) the procurement and maintenance of the service contracts required by this Section 11.1, (ii) timely observance of all procedures itemized under the Building Maintenance Checklist set forth on the Exhibit J attached to and made a part of this Lease, and (iii) due and timely performance of all measures reasonably necessary to assure that the Premises shall remain in full compliance with the Due Care Plan, as required under Section 4.2.2. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Tenant shall, during the Term, keep the exterior appearance of the improvements on the Premises in a first class condition (including, e.g., graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity and Tenant shall surrender the Premises, at the end of the Term, in such condition, reasonable wear and tear excepted; provided, however, that Tenant has engaged in good maintenance and preventative maintenance practices and Tenant shall be obligated to replace worn out items. Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to the Building caused by any act or neglect of Tenant or any Tenant Party (including any damage by fire or other casualty arising therefrom). Tenant shall not, in the course of its repair, maintenance or construction, invalidate any of the warranties on the Premises, including, but not limited to those that relate to the roof, the stormwater management system, the elevator, and the sprinkler systems. All of such repairs and replacements shall be of good quality sufficient for the proper maintenance and operation of the Premises, and shall be constructed and installed in compliance with Legal Requirements and Insurance Requirements. Repairs or replacements to Building Systems may be performed only by contractors approved in advance by Landlord.

- 11.1.2 Tenant shall not permit the accumulation of waste or refuse matter, nor permit anything to be done upon the Premises that would invalidate or prevent the procurement of any insurance policies or governmental permits, licenses or approvals that may at any time be required pursuant to the provisions hereof. Tenant shall not place a load upon any floor in the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by Legal Requirements. Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight.
- 11.1.3 Tenant shall, at Tenant's sole expense, obtain and keep in full force and effect during the Term of this Lease (with copies to Landlord, and in customary form and substance reasonably acceptable to, and with contractors reasonably approved by, Landlord) service contracts for such of the Building Systems as are indicated for a "service agreement" on the attached Exhibit J, as well as for any other equipment as to which such contracts shall reasonably be required by Landlord. If Tenant shall fail to obtain or maintain the service contracts required pursuant to this Section 11.1.3, Landlord may, after ten (10) Business Days' notice to Tenant, obtain and maintain the same, and the reasonable cost thereof shall be collectible by Landlord, upon demand, as Additional Rent.
- 11.1.4 If repairs, maintenance or other work is required to be made by Tenant pursuant to the terms of this Lease, and Tenant fails to commence the repairs and/or other obligations and diligently prosecute such repairs and/or obligations to completion, upon not less

than ten (10) Business Days' prior written notice (except that no notice shall be required in the event of an emergency), Landlord may make or cause such repairs to be made or such obligations to be performed (but shall not be required to do so), and all costs incurred by Landlord in connection therewith shall be paid by Tenant to Landlord on demand and shall be Additional Rent. Landlord shall not be responsible to Tenant for any loss or damage whatsoever that may accrue to Tenant's stock or business by reason of Landlord's making such repairs.

11.1.5 Tenant shall be solely responsible for security measures at the Premises. Tenant acknowledges that Landlord has not undertaken any duty whatsoever to provide security for the Premises and, accordingly, Landlord is not responsible for the security of same or the protection of Tenant's property or Tenant's employees, invitees, students, parents, or contractors from any cause whatsoever, including but not limited to criminal and/or terrorist acts. To the extent Tenant determines that such security or protection services are advisable or necessary, Tenant shall arrange for and pay the costs of providing same. Landlord shall have no responsibility to prevent, and shall not be liable to Tenant for losses due to theft, burglary or other criminal activity, or for damages or injuries to persons or property resulting from persons gaining access to the Premises, and Tenant hereby releases Landlord and all other Landlord Parties from all liabilities for such losses, damages or injury, regardless of the cause thereof.

11.2 <u>Landlord's Obligations</u>.

- 11.2.1 Landlord, at its sole cost, except as provided in Section 11.1 above, shall maintain, repair and replace the roof of the Building (except Tenant shall be responsible for the payment of all costs of repairs and replacements to the roof required as a result of the installation, use, operation, maintenance, repair or replacement of any equipment or facilities installed by Tenant or any party claiming under Tenant on the roof of the Building, including, without limitation, any mechanical systems in any portion of the Building serving such roof equipment and facilities) and the structural elements (excluding exterior glass) of the Building (i.e. load bearing walls, foundation and slab).
- 11.2.2 During the first seventy-two (72) full calendar months of the Term, the total of Landlord's costs and expenses incurred in maintaining, repairing and replacing the roof and the structural elements of the Building, as required under Section 11.2.1 (altogether, the "Capital Repair Costs"), shall be added to the estimated fair market value of the Premises specified under Section 2.4. If Tenant shall not exercise the option to purchase provided under Section 2.4, however, then Landlord shall provide Tenant with an amendment to this Lease setting forth a revised schedule of annual Base Rent, which, beginning with the seventh (7th) Lease Year, shall be determined by increasing the annual Base Rent set forth in Section 3.1 above for each Lease Year thereafter during the Term by such amounts as may be reasonably required, as determined by Landlord in good faith, in order to ensure that Landlord receives the same rate of return on the Capital Repair Costs as Landlord shall receive on its capital investment in Landlord's Work.
- 11.2.3 Landlord shall in no event be responsible to Tenant for any condition in the Premises or the Building caused by any act or neglect of Tenant or any Tenant Party. Nor shall Landlord be responsible to make any improvements or repairs to the Building other than as expressly provided in this Lease.

11.3 <u>Interruption</u>. Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury arising from Landlord's making any repairs, replacements or changes which Landlord is required or permitted by this Lease, or required by applicable Legal Requirements or Insurance Requirements, to make in or to the fixtures, equipment or appurtenances of the Building or the Premises. Landlord shall not be responsible in any manner for any suspension, interruption or curtailment of any services or utilities to the Premises, regardless of the cause thereof, and no such suspension, interruption or curtailment shall give rise to any claim for abatement of rent or other compensation to Tenant from Landlord, nor shall Tenant claim any direct, indirect or consequential damages or constructive eviction on account thereof, nor shall this Lease or any obligation of Tenant be affected thereby. Tenant hereby expressly waives any and all rights of rent abatement or other remedies on account of any untenantability and Tenant's sole right and remedy shall be as set forth in Section 21.5 of this Lease.

ARTICLE XII Utilities

- 12.1 Procurement and Payment of Utilities. Tenant shall be responsible to procure the supply of any and all utilities necessary for Tenant's use and occupation of the Premises and, subject to the performance of Landlord's Work and Landlord's express obligations under ARTICLE XI, Landlord will have absolutely no responsibility or obligation to provide any utility or other service to the Premises. Tenant shall contract for, in its own name, and shall pay all taxes, assessments, charges/deposits, fees and bills for utilities including, without limitation, charges for water, gas, oil, sanitary and storm sewer, electricity, steam, telephone service, trash collection, internet access, cable television or satellite service, and all other utilities that may be charged against any occupant or user of the Improvements during the Term. Tenant shall at all times maintain that amount of heat necessary to ensure against the freezing of water lines. Tenant shall indemnify, defend, save and hold Landlord harmless of, from and against any and all claims, liability or damages, including, but not limited to, claims based upon Tenant's failure to pay any fees or other charges for utility services supplied to the Premises, or damages to the utility systems and the Premises, that may result from Tenant's failure to maintain sufficient heat in the Premises. All charges for utilities or services at the Premises before the Rent Commencement Date and after the expiration or earlier termination of the Lease shall be payable by Landlord.
- 12.2 <u>Capacity</u>. Tenant shall use best efforts such that its use of electric current shall not exceed the capacity of the then existing feeders to the Building or the risers or wiring installations serving the Premises. Any additional electrical capacity and any risers, feeders or other equipment or service proper or necessary to supply Tenant's electrical requirements, shall, upon written request of Tenant, be installed by Landlord at the expense of Tenant, if in Landlord's reasonable judgment any additional capacity required is then available in the Building, the installations are necessary and will not cause permanent damage or injury to the Building or the Premises, or cause or create a dangerous or hazardous condition, or entail excessive or unreasonable alterations, repairs or expense.
- 12.3 <u>Interruption</u>. Landlord shall not be liable to Tenant for any loss, damage or expense which Tenant may sustain or incur if (i) the supply of electricity or other service or utility

to the Premises is temporarily interrupted, or (ii) the quantity or character of the electric service is changed or is no longer available or suitable for Tenant's requirements.

ARTICLE XIII Landlord's Services

- 13.1 <u>Landlord's Obligation</u>. Upon the completion of Landlord's Work, save and except for Landlord's obligations pursuant to <u>Section 11.2</u>, Landlord shall have no obligation to furnish to the Premises any cleaning services, electric energy, water, heat, air-conditioning, ventilation, gas or any other service or utility. Tenant shall obtain heat, air-conditioning, ventilation, gas and any other services or utilities required by Tenant at Tenant's sole cost and expense and in compliance with the applicable provisions of (i) all Legal Requirements and Insurance Requirements, (ii) the rules and regulations of any public utility or other company furnishing such service or utility, and (iii) this Lease.
- 13.2 <u>Triple Net Lease</u>. It is understood and agreed by the Parties that, except for Landlord's obligations under <u>Section 11.2</u> of this Lease, this Lease is considered and intended to be a "triple net" lease, providing and yielding to the Landlord payment of the Base Rent and Additional Rent (and to third parties, as applicable) as and when due hereunder absolutely free and net of all expenses, costs and charges allocable to the Term which are in any manner associated with the ownership, operation, use, management, repair, maintenance, and insuring of the Premises, and Tenant is agreeing to be absolutely responsible for all costs, expenses, taxes and charges relating to its use and occupancy of the Premises during the period of its use and occupancy, unless otherwise provided herein.
- Landlord's Rights of Access. After reasonable notice (except in emergencies when no such notice shall be required) which may be by telephone or e-mail, Landlord, its agents and representatives, shall have the right (without any obligation so to do) to enter the Premises (i) to inspect the same, (ii) to exercise such rights as may be permitted hereunder, (iii) to make repairs or alterations to the Premises, (iv) to make repairs or perform other obligations if Tenant fails to do so as required hereunder (but the Landlord shall have no duty whatsoever to make any such inspections, repairs, alterations, additions or improvements except as otherwise expressly provided in this Lease), (v) to deal with emergencies, (vi) to post such notices as may be permitted under Section 9.6, (vii) to exhibit the Premises to prospective tenants during the twenty four (24) months preceding expiration of the term of this Lease and at any reasonable time during the Term to show the Premises to prospective purchasers, lessors and mortgagees, or (viii) for any other purpose as Landlord may deem necessary or desirable; provided, however, Landlord shall use reasonable efforts not to materially interfere with Tenant's use of or access to the Premises and Landlord shall be accompanied by a designated representative of Tenant if and to the extent Tenant makes such representative available during such entry period. Tenant shall not be entitled to any abatement of rent or other charges nor shall Landlord be deemed guilty of an eviction, actual or constructive, or any violation of Tenant's quiet enjoyment of the Premises on account of Landlord's access to the Premises pursuant to the provisions of this Section 13.3 or any other provision of this Lease or applicable Legal Requirements.

ARTICLE XIV Subordination

- Subordination of Lease. Subject to the terms of this ARTICLE XIV, this Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to any ground lease of the Premises, and all renewals, extensions, modifications and replacements thereof, and to all mortgages, deeds of trust, security interests and similar encumbrances (collectively, a "Mortgage") which may now or hereafter affect the Premises, whether or not such Mortgage shall also cover other lands and/or buildings and/or leases, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such Mortgages and all consolidations of such Mortgages. This Section shall be self operative and no further instrument of subordination shall be required. Nonetheless, in the case of all Superior Mortgages entered into by Landlord, Landlord shall use reasonable efforts to cause the holder of any Superior Mortgage to join with Landlord and Tenant in a subordination, non-disturbance and attornment agreement which, for all purposes, shall govern the subordination of this Lease to a Superior Mortgage, and the relative rights and obligations of Tenant and Mortgagee with respect to this Lease, on such Superior Mortgagee's standard form, incorporating the comments and revisions of Tenant acceptable to Superior Mortgagee in its reasonable discretion, but in no event modifying the financial obligations of Tenant hereunder, the rights granted to Tenant hereunder, or the material terms and conditions of this Lease. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord, the lessor under any such lease or the holder of any such Mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. Any ground lease to which this Lease is, at the time referred to, subject and subordinate is herein called "Superior Lease" and the lessor of a Superior Lease or its successor in interest at the time referred to, is herein called "Superior Lessor"; and any Mortgage to which this Lease is, at the time referred to, subject and subordinate, is herein called "Superior Mortgage" and the holder of a Superior Mortgage, or its successor in interest at the time referred to, is herein called "Superior Mortgagee."
- Attornment. If any Superior Lessor or Superior Mortgagee or the nominee or designee of any Superior Lessor or Superior Mortgagee shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, or otherwise, then at the request of such party so succeeding to Landlord's rights (herein called "Successor Landlord"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord (unless formerly the landlord under this Lease or its nominee or designee) shall not be (i) liable in any way to Tenant for any act or omission, neglect or default on the part of Landlord under this Lease or for any claim against Landlord arising before the date on which the successor succeeded to Landlord's interest, (ii) responsible for any monies owing by or on deposit with Landlord to the credit of Tenant, (iii) subject to any counterclaim, offset or setoff which theretofore accrued to Tenant against Landlord, excluding express offset rights of Tenant set forth in this Lease, (iv) bound by any modification of this Lease subsequent to such Superior Lease or Mortgage, or by any previous prepayment of Base Rent for more than one (1) month, which was not approved in writing by the Superior Lessor or the Superior Mortgagee thereto, (v) liable to the Tenant beyond the Successor Landlord's interest in

the Premises and the rents, income, receipts, revenues, issues and profits issuing from such Premises, (vi) responsible for the performance of any work to be done by the Landlord under this Lease to render the Premises ready for occupancy by the Tenant, (vii) bound by any amendment or modification of such Lease made without its written consent, or (viii) required to remove any person occupying the Premises or any part thereof, except if such person claims by, through or under the Successor Landlord.

14.3 <u>Notice to Mortgagee</u>. After receiving notice from Landlord of any holder of a Mortgage which includes the Premises, no notice from Tenant to Landlord alleging any default by Landlord shall be effective unless and until a copy of the same is given to such holder (provided Tenant shall have been furnished with the name and address of such holder), and the curing of any of Landlord's defaults by such holder shall be treated as performance by Landlord.

ARTICLE XV **Quiet Enjoyment**

Subject to the terms and conditions of this Lease and subject to the rights of any Superior Mortgagee or Superior Lessor, on payment of the Base Rent and other Additional Rent and observing, keeping and performing all of the other terms and conditions of this Lease on Tenant's part to be observed, kept and performed, Tenant shall lawfully, peaceably and quietly enjoy the Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to Tenant. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

ARTICLE XVI Assignment, Subletting and Mortgaging

<u>Restriction on Transfer.</u> Except as otherwise permitted in this <u>ARTICLE XVI</u>, Tenant covenants and agrees that neither this Lease nor the term and estate hereby granted, nor any interest herein or therein, may be assigned, mortgaged, pledged, encumbered or otherwise transferred, whether voluntarily, involuntarily, directly or indirectly, by operation of law or otherwise, and that neither the Premises nor any part thereof may be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied or permitted to be used or occupied, by anyone other than Tenant, or for any use or purpose other than the Permitted Use, or be sublet (which term, without limitation, shall include granting of concessions, licenses and the like) in whole or in part, or be offered or advertised for assignment or subletting by Tenant or any person acting on behalf of Tenant, without, in each case, the prior written consent of Landlord, which consent, except as otherwise expressly provided in this Lease, may be withheld by Landlord in its sole and absolute discretion. Without limitation, the provisions of this Section 16.1 shall apply to a transfer (by one or more transfers) of a controlling portion of or interest in the stock or partnership or membership interests or other evidences of equity interests of Tenant as if such transfer were an assignment of this Lease. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than Tenant, whether or not in violation of the terms and conditions of the Lease, Landlord may, at any time and from time to time, collect rent and other charges from the assignee, subtenant or occupant, and apply the net amount collected to the rent and other charges herein reserved, but no such assignment, subletting, occupancy, collection or modification of any provisions of this Lease shall be deemed a waiver of the provisions of this ARTICLE XVI, or the acceptance of the assignee, subtenant or occupant as

a tenant or a release of Tenant from the further performance of covenants on the part of Tenant to be performed hereunder. Any consent by Landlord to a particular assignment, subletting or occupancy or other act for which Landlord's consent is required under this <u>Section 16.1</u> shall not in any way diminish the prohibition stated in this <u>Section 16.1</u> as to any further such assignment, subletting or occupancy or other act or the continuing liability of the original named Tenant. No assignment or subletting hereunder shall relieve Tenant from its obligations hereunder, and Tenant shall remain fully and primarily liable therefor.

- 16.1.1 If Tenant shall desire to sublet all or any portion of the Premises or assign this Lease, Tenant shall submit to Landlord a written request for Landlord's consent to such sublet or assignment, which request (the "Request") shall contain or be accompanied by the following information:
 - (a) The name and address of proposed subtenant or assignee;
- (b) A duplicate original or photocopy of the sublease agreement or assignment and assumption agreement;
- (c) The nature and character of the business of the proposed subtenant or assignee and its proposed use of the Premises;
- (d) Banking, financial and other credit information with respect to the proposed subtenant or assignee reasonably sufficient in the judgment of Landlord to enable Landlord to determine the financial responsibility of the proposed subtenant or assignee; and
- (e) A certification from the Tenant and the proposed assignee or subtenant that the proposed assignee or subtenant is a Non-Profit Company.
- 16.1.2 The form of the proposed sublease or instrument of assignment (i) shall be in form reasonably satisfactory to Landlord, and, without limitation, (A) shall not provide for a rental or other payment for the, occupancy or utilization of the space demised thereby based in whole or in part on the income or profits derived by any person from the property so leased, used, occupied or utilized other than an amount based on a fixed percentage or percentages of gross receipts or sales, and (B) shall provide that no person having an interest in the possession, use, occupancy or utilization of the space demised thereby shall enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of such space which provides for a rental or other payment for such use, occupancy or utilization based in whole or in part on the income or profits derived by any person from the property so leased, used, occupies or utilized other than an amount based on a fixed percentage or percentages of gross receipts or sales, and that any such purported lease, sublease, concession or other agreements shall be absolutely void and ineffective *ab initio*, and (ii) shall comply with the applicable provisions of this <u>ARTICLE</u> XVI;
- 16.1.3 Tenant shall reimburse Landlord on demand (and in no event later than the effective date of any assignment or sublease) for any reasonable costs incurred by Landlord in connection with any proposed assignment or subletting including, without limitation, the reasonable costs of making investigations as to the acceptability of the proposed assignee or subtenant and reasonable costs incurred in connection with the granting of the requested consent, including, without limitation, any legal, appraisal, recording, title, document preparation or

closing fees and any mortgage recording taxes. Notwithstanding the provisions of the above, Tenant shall remain liable to Landlord for any such costs that may be incurred by Landlord after the effective date of any assignment consented to in accordance with the terms of this paragraph.

- 16.1.4 In no event shall any assignment or subletting to which Landlord may have or may not have consented, release Tenant or any guarantor from its obligations under this Lease, or constitute consent to any further assignment or subletting. Anything contained in this Lease to the contrary notwithstanding, Tenant shall not (i) sublet the Premises or assign this Lease on any basis such that the rental or other amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by any person from the Premises or by the business activities of the sublessee or assignee; (ii) sublet the Premises or assign this Lease to any person, directly or indirectly, in which Landlord owns (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code) a ten percent (10%) or greater interest as defined by Section 856(d)(2)(B) of the Internal Revenue Code; or (iii) sublet the Premises or assign this Lease in any other manner or otherwise derive any income which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c) (2) of the Internal Revenue Code. The requirements of this Section 16.1.4 shall likewise apply to any further subleasing by any subtenant.
- 16.1.5 If Landlord shall consent to any proposed assignment or subletting, or shall decline to give its consent to any proposed assignment or subletting, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or subletting.
- 16.1.6 Tenant shall pay to Landlord an amount equal to fifty percent (50%) of any net profit derived from any assignment of this Lease or subletting of the Premises to any person or entity that is not an Affiliate of Tenant (as defined below). Net profit shall mean any consideration paid by any assignee in connection with its acquisition of this Lease or the rent by any subtenant in connection with its subletting of the Premises and, in the event of a subletting, the amount of minimum rent and additional rent paid by any subtenant over the amount of minimum rent and additional rent paid by Tenant under this Lease, less only any Transfer Expenses (hereinafter defined). Such net profit shall be calculated on an annualized basis but shall be paid to Landlord, as Additional Rent, within ten (10) Business Days after receipt thereof by Tenant. "Transfer Expenses" shall mean (i) the reasonable out-of-pocket costs and expenses of Tenant in making such sublease or assignment, as the case may be, such as brokers' fees and commissions, attorneys' fees and advertising fees, (ii) any fees paid to Landlord pursuant to the terms of this Lease, and (iii) the cost of improvements or alterations made by Tenant expressly for the purpose of preparing the Premises for such subtenant or assignee or improvement allowances. In determining Transfer Expenses, the costs shall be amortized on a straight-line basis over the term of the sublease, or the remainder of the term of this Lease.
- 16.1.7 Notwithstanding anything to the contrary contained in this Paragraph, Landlord at its option shall have the right to cancel this Lease (with the same force and effect as if

the entire Term had expired by lapse of time) by written notice given to Tenant at any time within twenty (20) Business Days of Tenant's Request with respect to an assignment of this Lease or subletting of all or substantially all of the Premises, and if Landlord elects to cancel this Lease, the Term shall fully cease and expire on a date selected by Landlord in its notice of cancellation (which date shall not be less than ten (10) nor more than forty (40) Business Days after the date of such cancellation notice).

- 16.1.8 In no event shall Tenant be entitled to make, nor shall Tenant make any claim, and Tenant hereby waives any claim, for money damages, nor shall Tenant claim any money damages by way of set-off, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval to a proposed assignment or subletting as provided for above, but Tenant's sole remedy shall be an action or proceeding to enforce any such provisions, or for specific performance, injunction or declaratory judgment.
- 16.2 Permitted Licensing. Provided that no Event of Default under this Lease shall exist at any time during the pendency of such licensing, Tenant may during the first three (3) Lease Years only—notwithstanding the provisions of the preceding <u>Section 16.1</u>, and at all times subject to all of the other terms and conditions of the Lease—grant from time to time, in writing, certain personal and revocable licenses to use up to three (3) classrooms of the Premises for Head Start-sponsored (or similar) early childhood programming and parent involvement services serving low-income children and their families. No licensed use permitted under this Section 16.2 shall interfere in any manner with the Permitted Use. Neither shall any licensed use extend for a period of more than six (6) hours in any twenty-four (24) hour period, nor rise to any level of right, intensity, duration, or repetition that may be deemed to constitute a conveyance of a possessory interest in land. All licensees of Tenant shall assume, by a written instrument reasonably satisfactory to Landlord, the due performance of all of the pertinent covenants and obligations under this Lease. Each license permitted under this Section 16.2 shall contain provisions to the effect that such license is only for actual use of the licensee. Notwithstanding the terms of such written instrument(s), Tenant shall remain fully liable for all performance under the Lease.

ARTICLE XVII Signage

Tenant may erect interior signs on the Premises without Landlord's prior written consent provided such signs comply with applicable Legal Requirements and Insurance Requirements. Landlord shall, as part of Landlord's Work, place Tenant's name on the Building, in a manner reasonably acceptable to Tenant. Tenant shall not place any other signs on the Land or Building visible from the exterior of the Building without Tenant obtaining Landlord's consent, which consent shall not be unreasonably withheld, and the consent of any applicable governmental or municipal authorities. Such signs shall conform to the reasonable sign standards for the Premises adopted by Landlord and all Legal Requirements and, before installation of Tenant's signs, Tenant must submit to Landlord a plan or sketch in reasonable detail (showing, without limitation, size, color, location, materials and method of affixation) of the sign.

ARTICLE XVIII Damage or Destruction

- Premises are damaged by fire or other casualty. If the Premises are Substantially Damaged by fire or other casualty (the term "Substantially Damaged" meaning damage of such a character that (i) the Premises are rendered unusable for the Permitted Use and (ii) the same cannot, in the ordinary course, reasonably be expected to be repaired within one hundred eighty (180) calendar days from the time that repair work would commence, as determined by a contractor mutually satisfactory to the Parties) and this Lease is not terminated pursuant to any of the provisions of this Section 18.1, then Landlord shall use reasonable efforts to restore the Premises (excluding Tenant's Removable Property and any Alterations performed by or on behalf of Tenant) within a reasonable period of time to proper condition for Tenant's use and occupancy, and Rent shall be abated in accordance with Section 18.3, provided that Landlord's obligation shall be limited to the amount of insurance proceeds available therefor, and Landlord shall not be obligated to commence restoration until Landlord has received the insurance proceeds and Tenant has paid the applicable deductible to Landlord.
- 18.1.1 If the Premises are Substantially Damaged by fire or other casualty, then Landlord shall have the right to terminate this Lease by giving notice of Landlord's election to do so within ninety (90) days after the occurrence of such casualty. If Landlord's reasonable estimation of the length of time necessary to repair or restore the Premises after such fire or other damage exceeds eighteen (18) months from the date of the casualty and Tenant is unable to secure alternative space for a period in excess of eighteen (18) months, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to do so within sixty (60) days after Landlord's notice. Such right of termination shall be Tenant's sole and exclusive remedy at law or in equity for Landlord's failure so to complete such restoration, and time shall be of the essence with respect thereto.
- 18.1.2 If this Lease is terminated pursuant to <u>Section 18.1.1</u>, the Term shall be over on the specified cancellation date with the same force and effect as if such date were the date originally established as the expiration date hereof. Tenant shall have no obligation to pay rent after the termination date of the Lease. Tenant will look only to its own insurance as required by this Lease, whether or not obtained, to recover any damages or losses suffered as a result of the damage including but not limited to early termination of the Lease, loss of business, damage to property, trade fixtures, etc. Tenant releases Landlord from liability and waives right of recovery against Landlord for all losses or damages resulting from the casualty to the extent that it would have been compensated by insurance required to be carried by Tenant under this Lease. Tenant shall retain the proceeds of all insurance maintained by Tenant and allocable to Tenant's Removable Property, without claim by Landlord.
- 18.1.3 If this Lease is not terminated pursuant to Section 18.1.1, the proceeds of insurance carried pursuant to <u>ARTICLE VIII</u> ("Insurance Proceeds") shall be used to pay for the repair and restoration work performed pursuant to the terms hereof. If the total cost of restoring the Premises, as provided in this Article, is less than the amount of the Insurance Proceeds applicable to such restoration work, the balance of the Insurance Proceeds shall be paid to the party responsible for maintaining such insurance upon delivery of final waivers of lien and such other documentation as may be reasonably requested by the other party in order to confirm that such restoration work has been completed in substantial accordance with the terms hereof. If this

Lease is terminated by either Party pursuant to the terms and provisions of this Article, all Rent shall be prorated to the date of such damage or destruction and all Insurance Proceeds shall be retained (i) by Tenant if the policy yielding such Insurance Proceeds was obtained pursuant to Section 8.2 of this Lease and (ii) by Landlord if the policy yielding such Insurance Proceeds was obtained pursuant to Section 8.3 of this Lease. If the total cost of restoring the Premises, as provided in this Article, shall exceed the amount of Insurance Proceeds available for such restoration (as determined by a contractor mutually satisfactory to the Parties), then Tenant may (but shall not be required to) provide its own funds to supplement such Insurance Proceeds, as necessary to restore the Premises. If Tenant shall not provide such funds, however, within twenty (20) Business Days after the pertinent determination by the contractor selected by the Parties, then Landlord may elect to terminate this Lease by giving notice of such election at any time within forty (40) Business Days thereafter, which termination shall be effective as of the date of such notice.

- 18.2 Partial Damage. If the Premises are damaged by fire or other casualty under this ARTICLE XVIII but are not Substantially Damaged, Landlord shall thereafter promptly restore the Premises (excluding Tenant's Removable Property and any Alterations performed by or on behalf of Tenant) to substantially the condition they were in immediately prior to such casualty and Base Rent shall be equitably abated for the period during which Landlord shall be restoring such Premises; provided, however, that Landlord's obligation shall be limited to the amount of Insurance Proceeds available therefor, and that Landlord shall not be obligated to commence restoration until Landlord has received the Insurance Proceeds and Tenant has paid the applicable deductible to Landlord. After any such damage or destruction, Tenant shall cooperate with Landlord by removing from the Premises in a reasonable time all of Tenant's Removable Property. Notwithstanding anything to the contrary contained in this Lease, if Landlord does not commence the repair or restoration of such damage within the required time, or in the event that such repairs or restorations are not completed within two hundred (200) Business Days after the date of the casualty, Tenant shall have the right to terminate this Lease upon written notice to Landlord.
- 18.3 <u>Damage Due to Tenant's Acts or Omissions</u>. If the damage or destruction to the Premises is a direct result of Tenant's negligent or intentional actions or omissions, then Tenant shall be responsible in full for payment of all Base Rent and Additional Rent unabated. In all other cases, if after damage or destruction to the Premises Tenant is unable to continue to use the Premises for the Permitted Use or if Tenant is only able to use a portion of the Premises for the Permitted Use, then Base Rent and Additional Rent shall be abated or a pro rata portion of the Base Rent and Additional Rent shall be abated, as applicable, from the date of such damage or destruction and shall resume five (5) Business Days after written notice from Landlord that Landlord's restoration is complete. The end date of the term of this Lease shall not change.
- 18.4 <u>Tolling</u>. Notwithstanding anything to the contrary contained in this Lease, the Parties' respective rights to terminate this Lease pursuant to <u>Section 18.1</u> of this <u>ARTICLE XVIII</u> shall be tolled during the period between Tenant's exercise of its option to purchase the Premises pursuant to the Option Agreement and the Closing Date (as defined in the Option Agreement).
- 18.5 <u>Restoration Near End of Term</u>. If the Premises are damaged or destroyed to such an extent as to render them untenantable within twenty-four (24) months of the expiration of the Term or of any Renewal Period hereof, then, at Tenant's or Landlord's option and upon notice to the other given within twenty (20) Business Days after the date of the casualty, this Lease shall